राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 17 अक्तूबर, 2023 / 25 आश्विन, 1945

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated, the 11th September, 2023

No. Shram (A) 3-2/2023 (Awards) L.C. Shimla.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to

order the publication of awards of the following cases announced by the Presiding Judge, Labour Court, Shimla on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* "e-Gazette" :—

Sl. No.	Case No.	Petitioner	Respondent	Date of Award/Order
1.	Ref. 53/2019	Sh. Pritam Chand	The XEN, HPSEB, Paonta Sahib	01-07-2023
2.	Ref. 54/2019	Sh. Rohit Kumar	The XEN, HPSEB, Paonta Sahib	01-07-2023
3.	Ref. 56/2016	Sh. Sunil Kumar	The CEO SEHB M.C. Shimla	01-07-2023
4.	Ref. 36/2020	Sh. Mahinder	The D.F.O. Kunihar, Solan	01-07-2023
5.	Ref. 47/2020	Sh. Devender Kumar	The D.F.O. Kunihar, Solan	01-07-2023
6.	Ref. 48/2020	Sh. Bali Ram	The D.F.O. Kunihar, Solan	01-07-2023
7.	Ref. 51/2020	Sh. Sushil Kumar	The D.F.O. Kunihar, Solan	01-07-2023
8.	Ref. 52/2020	Sh.Ramesh Chand	The D.F.O. Kunihar, Solan	01-07-2023
9.	Ref. 53/2020	Sh. Amar Singh	The D.F.O. Kunihar, Solan	01-07-2023
10.	Ref. 55/2020	Sh. Narpat Ram	The D.F.O. Kunihar, Solan.	01-07-2023
11.	Ref. 119/2018	Sh. Harinder Pal	M/s Sikand & Co. Chambaghat	01-07-2023
12.	Ref. 256/2020	Sh. Puran Chand	M/s R.B. Knit Exports, Solan	01-07-2023
13.	Ref. 119/2021	Sh. Yash Pal	M/s R.B. Knit Exports, Solan	01-07-2023
14.	Ref. 120/2021	Sh. Jitender Kumar	M/s R.B. Knit Exports, Solan	01-07-2023
15.	Ref. 256/2021	Sh. Hukum Chand	M/s R.B. Knit Exports, Solan	01-07-2023
16.	Ref. 257/2021	Sh. Avinash	M/s R.B. Knit Exports, Solan	01-07-2023
17.	Ref. 258/2021	Sh. Sant Ram	M/s R.B. Knit Exports, Solan	01-07-2023
18.	Ref. 07/2022	Sh. Devinder Kumar	M/s R.B. Knit Exports, Solan	01-07-2023
19.	Ref. 08/2022	Sh. Jeet Ram	M/s R.B. Knit Exports, Solan	01-07-2023
20.	Ref. 89/2017	Sh. Harish Chauhan	M/s Abbott Healthcare (P) Ltd.	01-07-2023
21.	Ref. 93/2020	Sh. Rizwan	The XEN, IPH, Paonta Sahib	01-07-2023
22.	Ref. 95/2020	Sh. Saddam Hussain	The XEN IPH, Paonta Sahib	01-07-2023
23.	Ref. 96/2020	Sh. Kuldeep Singh	The XEN IPH, Paonta Sahib	01-07-2023
24.	Ref. 97/2020	Sh. Sanjeev Kumar	The XEN IPH, Paonta Sahib	01-07-2023
25.	Ref. 98/2020	Sh. Salman Khan	The XEN IPH, Paonta Sahib	01-07-2023
26.	Ref. 100/2020	Sh. Naveen Kumar	The XEN IPH, Paonta Sahib	01-07-2023
27.	Ref. 183/2021	Sh. Virender Singh	M/s Relax Pharmaceuticals Ltd.	01-07-2023

By order,

Sd/-
Dr. ABHISHEK JAIN (IAS)
Secretary (Lab. & Emp.).

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**.

Reference Number : 53 of 2019

Instituted on : 02-03-2019

Decided on : 01-07-2023

Pritam Chand s/o Sh. Babu Ram, r/o VPO Puruwala, Tehsil Paonta Sahib, District Sirmour, H.P. . .*Petitioner.*

VERSUS

1. The Executive Engineer, HPSEB Division, Paonta Sahib, District Sirmour, HP.

2. Shri Jagmohan Singh, Service provider, VPO Charna, Tehsil Sangrah, District Sirmour, HP. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri A. K. Gupta, Advocate

For respondent No.1 : Shri Surender Sharma, Advocate

For respondent No.2 : Ex-parte

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 20.02.2019, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

> "**Whether termination of the services of Shri Pritam Chand s/o Sh. Babu Ram, r/o VPO Puruwala, Tehsil Paonta Sahib, District Sirmour, H.P. w.e.f. 30.06.2017 by Shri Jagmohan Singh, Service provider, VPO Charna, Tehsil Sangrah, District Sirmour, HP and Executive Engineer, HPSEB Division, Paonta Sahib, District Sirmour, HP, without complying with the provisions of Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers**?"

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that in May, 2015, the petitioner was engaged as helper by the respondent no.1 through respondent no.2 and he worked continuously upto June 2017, when his services were terminated without following the mandatory provisions of the Act as neither any notice nor any sort of compensation was paid to him. The wages were disbursed to the petitioner by the HPSEB and his presence was also marked by the J.E concerned of respondent no.1 (HPSEB) and the respondent no.2 had no role at all with the engagement of the petitioner, hence, he is the employee of respondent no.1.

3. The following prayer clause has been appended in the footnote of the claim petition.

"**That in view of the above stated facts and circumstances the services of the petitioner are liable to be reinstated with all consequential benefits such as back-wages and seniority etc. as after said disengagement the petitioner remained unemployed and he is not gainfully employed anywhere. Therefore, the respondents may be ordered to reinstate the petitioner with all consequential benefits and the termination of the petitioner may be set aside"**

4. The lis was resisted and contested by respondent No.1 by filing written reply on inter-alia raising preliminary objections no cause of action, no valuable right of the petitioner has been violated, not come to this Court with clean hands and there is no industrial dispute between the petitioner and respondent no.1.

5. On merits, it is denied that the petitioner was engaged by the replying respondent in the years 2015 as a helper. The respondent no.1 has floated tender for providing skilled staff for implementation of TDCO, PDCO, MCO and SCO under Electrical Division Paonta Sahib pursuant to which the work was allotted to the Respondent No. 2 for a period of 49 days which was further extended w.e.f 01-04-2015 to 30-06-2015, w.e.f 01- 07-2015 to 30-09-2015, w.e.f 01-10-2015 to 31-03- 2016, w.e.f. 01-04-2016 to 31-03-2017 and w.e.f 01-04- 2017 to 31-03-2018. It is further averred that an agreement was executed between the Respondent No.1 and Respondent No. 2 in which it is specifically mentioned that the outsource staff will not be consider the employee of HPSEBL. The skilled staff was hired by the respondent No. 2 @ Rs.350/- per day. The payment is being made by the replying Respondent no.1 to the Respondent No. 2 who used to disburse the payment to the outsource skilled staff hired. The petitioner is not the employee of HPSEBL rather he was a workman of Respondent No. 2 and respondent No. 2 has hired the petitioner. As such the Replying respondent has not violated the provisions of the Act. That the respondent No. 2 is a service provider and he has to provide services as per the terms and conditions of letter of award and bound by the agreement executed by the respondent No. 2 with the replying respondent. The services of the applicant were not disengaged by the replying respondent as such the applicant is not maintainable and same is liable to be dismissed. So far as the question of making payment of wages by the replying respondent to the petitioner is concerned, he is required to prove the same by adducing cogent and reliable evidence. It is therefore prayed that the claim petition filed by the petitioner is liable to be dismissed.

6. Before proceeding further it is important to mention here that the respondent no.2 (Service Provider) was duly served but failed to appear before this Tribunal, hence, vide order dated 31.05.2019, he was proceeded against ex-aprte.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent no.1 and by reaffirming and reiterating the contents those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 13.03.2020, as under:

1. Whether the termination of the petitioner w.e.f. 30.06.2017, is violative of the provisions of Industrial Disputes Act, as alleged? If so, to what relief the petitioner is entitled to? . .*OPP.*

2. Whether the claim is not maintainable as the petitioner has no locus standi as he is not the workman of the respondent, as alleged? If so, its effect thereto? . .*OPR.*

3. Whether the petitioner has concealed material facts from this Court and has not come with clean hands, as alleged? If so, its effect thereto? . .*OPR.*

4. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Entitled for reinstatement with seniority and continuity but without back-wages.
Issue no. 2	No
Issue no. 3	No
Relief	Reference is answered in affirmative as per operative part of award

REASONS FOR FINDINGS

Issues No.1 & 2

12. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their final determination and adjudication.

13. In order to substantiate his case, the petitioner namely Pritam Chand appeared into the witness box as (PW-1), and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence copy of attendance register for the years May, 2015 to June 2017 Mark PA.

14. In cross-examination, he denied that he was working with the contractor and not with respondent department. He used to receive his salary through bank Account. He feigned ignorance that the contractor used to deposit his salary in his bank Account.

15. Per contra, the respondent no.1 (HPSEB) has examined Shri Parvinder Singh, Sr. Assistant ESD Dhaulakaun as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/B), wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence Office Orders (RW-1/C) to (RW-1/E), letter dated 07.04.2016 (RW-1/F), letter dated 10.03.2017 (RW-1/G), contract work (RW-1/H) and copy of running bills (RW-1/J).

16. In cross-examination he deposed that the petitioner was on contractual employment. He admitted that there is no mention in (RW-1/K) that the services of the petitioner was deployed with the respondent no.1. He cannot produce the licence obtained by the contractor to engage the services of the petitioner and the registration of the respondent department obtained under Contract Labour (Abolition and Regulation) Act. He admitted that the petitioner had worked with the respondent through contractor. The petitioner was working under the JE of the respondent in the field. He admitted that the petitioner was not issued any notice or retrenchment compensation at the time of retrenchment. He denied that the petitioner used to entertain the complaints and mark the attendance vide abstract Mark PX-1 and Mark PX-2.

17. Shri A. K. Gupta, Advocate for the petitioner has contended with vehemence that the petitioner was an employee of the HPSEB and his engagement through contractor has been shown just for the name sake. The petitioner used to work as helper under the direct supervision and control of the respondent no.1. He further argued that the petitioner had worked continuously from 2015 till July 2017 and had completed 240 working days in each calendar year, hence, the services of the petitioner cannot be terminated without complying with the provisions of section 25-F of the Act. Ld. Counsel further contended that after the termination of the services of the petitioner, the respondent department had retained his juniors and even engaged fresh hands in violation of the provisions of sections 25-G and 25-H of the Act. It is, therefore, prayed that the respondent (HPSEB) may kindly be ordered to reinstate the petitioner with all consequential benefits and the termination of the petitioner may be set aside.

18. Per contra, Shri Surender Sharma, Ld. Counsel for the respondent No.1 has strenuously argued that for the smooth functioning of the HPSEB, the petitioner was engaged as helper through contractor. The department had not engaged the petitioner. The overall control on the services of the petitioner was that of contractor. The contractor used to supervise the work of petitioner and he also used to pay the wages to the petitioner. He argued that since the petitioner was not the employee of respondent no.1, hence, the claim filed by him against respondent no.1 is liable to be dismissed.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Dy. DA for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Before, proceeding further, I would like to invite the attention of the parties to the relevant provisions of sections 7 & 12 of the Contract Labour (Regulation & Abolition) Act, 1970, which reads as under:

> **"7. Registration of certain establishments:—(1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment.....**
>
> **12. Licensing of contractors.—(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.....**

21. As per the provisions of section 7 & 12 of the aforesaid Act, the principal employer *i.e.* respondent no.1 should have a certificate of registration from the prescribed authority and secondly the contractor should have a licence issued by competent authority i.e. the Labour Department to deploy the contract labour. On perusal of the evidence on record, it is clear that neither the principal employer had the certificate of registration from the prescribed authority nor the contractor had a licence issued by the competent authority. RW-1, Shri Parvinder Singh, Sr. Assistant ESD of respondent no.1, has categorically deposed that he cannot produce the licence obtained by the contractor to engage the services of the petitioner and the registration of the respondent obtained under Contract Labour (Regulation & Abolition) Act. He admitted that the petitioner had worked with the respondent no.1 through contractor. He stated that the petitioner was working under JE in the field.

22. Now, the determinative question which arises for consideration before this Court/ Tribunal is as to whether the contract was sham, ingeniune and camouflage as contended by the Learned Counsel for the petitioner. As per the statement of claim, the petitioner was engaged by the respondent department through respondent no.2 and he was under the direct control and supervision of concerned JE of the department.

23. It is by now well settled that if the industrial adjudicator finds the contract between the principal employer and the contract to be a sham, nominal and a camouflage to deny employment benefits to the employee, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. **In (2009) 13 SCC titled as International Airport Authority of India Vs. International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court as under:

> **"36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.**
>
> **37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary: who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee".**

24. For the determination of the question as to whether the contract is a sham, ingenuine and camouflage and whether the concerned workers are the employees of the contractors or the principal employer, the Court is required to consider several factors. **In AIR 2004, SC 1639, in case of Workmen of Nilgiri Co-operative Marketing Society Ltd. Vs. Sate of Tamil Nadu**, the Hon'ble Apex Court has observed as under:

> "**37. The control test and the organization test, therefore, are not the only factors which can be said to decisive. With a view of elicit the answer, the court is required to consider several factors which would have a bearing on the result: (a) who is appointing authority; (b) who is the pay master: (c) who can dismiss; (d) how long alternative service lasts; (e) the extent of control and supervision; (f) the nature of the job, e.g, whether, it is professional or skilled work; (g) nature of establishment; (h) the right to reject. 38. With a view to find out reasonable solution in a problematic case of this nature, what is needed is an integrated approach meaning thereby integration of the relevant tests where for it may be necessary to examine as to whether the workman concerned was fully integrated into the employer's concern meaning thereby independent of the concern although attached therewith to some extent.**
>
> **96. The decisions referred to hereinbefore are indicative of the fact that the different tests have been applied in different cases having regard to the nature of the problem arising in the fact situation obtaining therein. Emphasis on application of control test and organization test have been laid keeping in view the question as to whether the**

matter involves a contract of service *vis-a-vis* contract for service; or whether the employer had set up a contractor for the purpose of employment of workmen by way of a smoke screen with a view to avoid its statutory liability".

25. The Hon'ble High Court of Gujrat in case titled as **Gujrat Majdoor Panchayat Vs State of Gujrat, spl. civil application no. 8434 of 1990** lays down the parameters for narrowing down the contingency about employee-employer relationship, which reads as under:

"**Even though principal employer may be registered employer and the contractor may be licensed contractor, and the workmen employed by him might be covered by the permissible number of employees as recognized by the license and even though such activities may be covered by a license, in fact and in substance, control including disciplinary control and supervision of the entire activity may be with the principal employer and the wages of the employees may in fact be coming out of coffers of the principal employer, and may be getting paid through the contractor who may operate as a mere conduit pipe. Such type of control, supervision and payment being outside the scope of section 10 (2) read with section 20 and 21 of the Contract Labour Act would give rise to the legitimate contention that the principal employer is in fact and substance the real employer and the so called contractor is an eye wash."**

26. There is no enunciation on the point of law as held by the Hon'ble Apex Court and Hon'ble high Court in this regard.

27. As a binding precedent, bearing in mind the entire facts and circumstances and evidence on record, this Tribunal reaches to an inescapable conclusion that the petitioner was the employee of respondent department and there exists relationship of employee and employer between the parties. It is clear from the evidence on record that the petitioner was working under the supervision and control of the respondent no.1. The alleged contractor did not give any directions about the work to be carried out by the petitioner. Neither the contractor nor any representative remained present to give any instructions to the petitioner. There is no evidence on record to show and prove that the contractor or supervisors of the contractors were visiting the respondent department to supervise the work of petitioner. It is an admitted position on record that the petitioner was working under the guidance of JE of the respondent department in the field and the petitioner was doing all the activities of HPSEB in the field and it is the JE who was the incharge of the petitioner and who used to supervise his work. The respondent department had placed on record the tender (RW-1/B), office order (RW-1/C) to (RW-1/E), letters (RW-1/F) and (RW-1/G), contract (RW-1/H and bills (RW-1/J) for the period from 09.02.2015 to September 2017 but there is no reference of the petitioner in the aforesaid bills. The petitioner has placed on record the copy of attendance register Mark PA. There is no evidence on record to suggest that the overall control and supervision on the services of the petitioner was that of contractor.

28. As observed earlier, the evidence, on record would further legitimately shows that the respondent department had no certificate of registration and the alleged contractor did not have the necessary licence under the Contract Labour (Regulation and Abolition) Act to deploy the contract labour. There Lordships of Hon'ble Supreme Court in **Secretary, Haryana State Electricity Board Vs. Suresh and other- AIR 1999 SUPREME COURT 1160**, has observed that once the so called contractor was not a licensed contractor under the Act, the inevitable conclusion that had to be reached was to the effect that so called contract system was a mere camouflage, smoke screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the principal employer, on the one hand, and the employees, on the other, could be clearly visualized. In the present case, this is one added factor which shows that the contract is sham and bogus as the evidence on record shows that neither the respondent department

had a certificate of registration nor the contractor had a licence at the relevant time. Admittedly, the petitioner had been continuously working since 2015 till 2017 with respondent no.1, therefore, it can safely be said that the petitioner is fully integrated in the establishment of the respondent.

29. Therefore, taking into consideration the above facts and various attending circumstances, it is clear that the contractor had no role to play so far as the petitioner is concerned and everything was supervised and controlled by the respondent department. All the facts would show that the contract was sham, nominal and a mere camouflage. The Hon'ble Apex Court in **Steel Authority of India Ltd. and others Vs. National Union Waterfront Workers and others, (2001) 7 SCC-1**, has held that if the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. The relevant extract of the aforesaid judgment reads as under:

> "**125 (5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder"**.

30. In the case in hand, as observed earlier, it has been proved on record that the so called contract is not genuine but a mere camouflage as such the petitioner will have to be treated as the employees of the principal employer i.e. the respondent department and he falls under the definition of "workman" as per section 2 (s) of the Act.

31. Admittedly, the petitioner has worked with the respondent department from May, 2015 till June, 2017 and thereafter his services have been terminated without issuing any notice and payment of compensation. There is also no dispute about the factum of completion of 240 working days by the petitioner with the respondent department. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the letter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified. Resultantly, the petitioner is held to be reinstated in service with seniority and continuity.

33. Now, the question arises as to as whether the petitioner is entitled for any back-wages or not? There is nothing on record which could go to show that after the termiantion, the petitioner was not gainfully employed. The petitioner has failed to discharge his burden by leading cogent and satisfactory evidence in this regard. Moreover, keeping in view the peculiar facts and circumstances

of the case, I am of the considered opinion that the petitioner is not entitled to any back-wages. Accordingly, both these issues are partly decided in favour of the petitioner and against the respodnent No.1 (HPSEB).

ISSUE NO. 3:

34. In support of this issue no specific evidence has been led by the respdonent no.1, which could go to show that the petitioner has concealed material facts from this Court and has not come with clean hands. In the absence of any evidence on record, this issue is decided in favour of the petitioner and against the respodnent No.1.

Relief:

35. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, directions are hereby passed to the **respondent no.1 (HPSEB) for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity.** However, the petitioner is **not entitled to any back-wages**. The reference is disposed off in the aforesaid terms.

36. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 54 of 2019

Instituted on : 02-03-2019

Decided on : 01-07-2023

Rohit Kumar s/o Shri Ashok Kumar, r/o Kumar Mohalla, Tehsil Paonta Sahib, District Sirmour, H.P. . .*Petitioner.*

VERSUS

1. The Executive Engineer, HPSEB Division, Paonta Sahib, District Sirmour, HP.

2. Shri Jagmohan Singh, Service provider, VPO Charna, Tehsil Sangrah, District Sirmour, H.P. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri A. K. Gupta, Advocate

For respondent No.1 : Shri Surender Sharma, Advocate

For respondent No. 2 : Ex-parte

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 20.02.2019, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"Whether termination of the services of Shri Rohit Kumar s/o Shri Ashok Kumar, r/o Kumar Mohalla, Tehsil Paonta Sahib, District Sirmour, HP w.e.f. 30.06.2017 by Shri Jagmohan Singh, Service provider, VPO Charna, Tehsil Sangrah, District Sirmour, HP and Executive Engineer, HPSEB Division, Paonta Sahib, District Sirmour, HP, without complying with the provisions of Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers?"

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that in May, 2015, the petitioner was engaged as helper by the respondent no.1 through respondent no.2 and he worked continuously upto June 2017, when his services were terminated without following the mandatory provisions of the Act as neither any notice nor any sort of compensation was paid to him. The wages were disbursed to the petitioner by the HPSEB and his presence was also marked by the J.E concerned of respondent no.1 (HPSEB) and the respondent no. 2 had no role at all with the engagement of the petitioner, hence, he is the employee of respondent no.1.

3. The following prayer clause has been appended in the footnote of the claim petition.

"That in view of the above stated facts and circumstances the services of the petitioner are liable to be reinstated with all consequential benefits such as back-wages and seniority etc. as after said disengagement the petitioner remained unemployed and he is not gainfully employed anywhere. Therefore, the respondents may be ordered to reinstate the petitioner with all consequential benefits and the termination of the petitioner may be set aside"

4. The lis was resisted and contested by respondent No.1 by filing written reply on inter-alia raising preliminary objections no cause of action, no valuable right of the petitioner has been violated, not come to this Court with clean hands and there is no industrial dispute between the petitioner and respondent no.1.

5. On merits, it is denied that the petitioner was engaged by the replying respondent in the years 2015 as a helper. The respondent no.1 has floated tender for providing skilled staff for implementation of TDCO, PDCO, MCO and SCO under Electrical Division Paonta Sahib pursuant to which the work was allotted to the Respondent No. 2 for a period of 49 days which was further extended w.e.f 01-04-2015 to 30-06-2015, w.e.f 01- 07-2015 to 30-09-2015, w.e.f 01-10-2015 to 31-03- 2016, w.e.f. 01-04-2016 to 31-03-2017 and w.e.f 01-04- 2017 to 31-03-2018. It is further

averred that an agreement was executed between the Respondent No.1 and Respondent No. 2 in which it is specifically mentioned that the outsource staff will not be consider the employee of HPSEBL. The skilled staff was hired by the respondent No. 2 @ Rs. 350/- per day. The payment is being made by the replying Respondent no.1 to the Respondent No. 2 who used to disburse the payment to the outsource skilled staff hired. The petitioner is not the employee of HPSEBL rather he was a workman of Respondent No. 2 and respondent No. 2 has hired the petitioner. As such the Replying respondent has not violated the provisions of the Act. That the respondent No. 2 is a service provider and he has to provide services as per the terms and conditions of letter of award and bound by the agreement executed by the respondent No. 2 with the replying respondent. The services of the applicant were not disengaged by the replying respondent as such the applicant is not maintainable and same is liable to be dismissed. So far as the question of making payment of wages by the replying respondent to the petitioner is concerned, he is required to prove the same by adducing cogent and reliable evidence. It is therefore prayed that the claim petition filed by the petitioner is liable to be dismissed.

6. Before proceeding further it is important to mention here that the respondent no. 2 (Service Provider) was duly served but failed to appear before this Tribunal, hence, vide order dated 31.05.2019, he was proceeded against *ex-aprte.*

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent no.1 and by reaffirming and reiterating the contents those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 01.06.2019, as under:

1. Whether the termination of the petitioner w.e.f. 30.06.2017, is violative of the provisions of Industrial Disputes Act, as alleged? If so, to what relief the petitioner is entitled to? . .*OPP.*

2. Whether the claim is not maintainable as the petitioner has no locus stands as he is not the workman of the respondent, as alleged? If so, its effect thereto? . .*OPR* .

3. Whether the petitioner has concealed material facts from this Court and has not come with clean hands, as alleged? If so, its effect thereto? . .*OPR.*

4. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Entitled for reinstatement with seniority and continuity but without back-wages.
Issue no. 2	No
Issue no. 3	No

Relief — Reference is answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

Issues No.1 & 2.

12. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their final determination and adjudication.

13. In order to substantiate his case, the petitioner namely Rohit Kumar appeared into the witness box as (PW-1), and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence copy of attendance register for the years may, 2015 to June 2017 Mark PA.

14. In cross-examination, he denied that he was working with the contractor and not with respondent department. He used to receive his salary through bank Account. He feigned ignorance that the contractor used to deposit his salary in his bank Account.

15. Per contra, the respondent no.1 (HPSEB) has examined Shri Parvinder Singh, Sr. Assistant ESD Dhaulakaun as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/B), wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence Office Orders (RW-1/C) to (RW-1/E), letter dated 07.04.2016 (RW-1/F), letter dated 10.03.2017 (RW-1/G), contract work (RW-1/H) and copy of running bills (RW-1/J).

16. In cross-examination he deposed that the petitioner was on contractual employment. He admitted that there is no mention in (RW-1/K) that the services of the petitioner was deployed with the respondent no.1. He cannot produce the licence obtained by the contractor to engage the services of the petitioner and the registration of the respondent department obtained under Contract Labour (Abolition and Regulation) Act. He admitted that the petitioner had worked with the respondent through contractor. The petitioner was working under the JE of the respondent in the field. He admitted that the petitioner was not issued any notice or retrenchment compensation at the time of retrenchment. He denied that the petitioner used to entertain the complaints and mark the attendance vide abstract Mark PX-1 and Mark PX-2.

17. Shri A. K. Gupta, Advocate for the petitioner has contended with vehemence that the petitioner was an employee of the HPSEB and his engagement through contractor has been shown just for the name sake. The petitioner used to work as helper under the direct supervision and control of the respondent no.1. He further argued that the petitioner had worked continuously from 2015 till July 2017 and had completed 240 working days in each calendar year, hence, the services of the petitioner cannot be terminated without complying with the provisions of section 25-F of the Act. Ld. Counsel further contended that after the termination of the services of the petitioner, the respondent department had retained his juniors and even engaged fresh hands in violation of the provisions of sections 25-G and 25-H of the Act. It is, therefore, prayed that the respondent (HPSEB) may kindly be ordered to reinstate the petitioner with all consequential benefits and the termination of the petitioner may be set aside.

18. Per contra, Shri Surender Sharma, Ld. Counsel for the respondent No.1 has strenuously argued that for the smooth functioning of the HPSEB, the petitioner was engaged as helper through contractor. The department had not engaged the petitioner. The overall control on the services of the petitioner was that of contractor. The contractor used to supervise the work of petitioner and he

also used to pay the wages to the petitioner. He argued that since the petitioner was not the employee of respondent no.1, hence, the claim filed by him against respondent no.1 is liable to be dismissed.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Dy. DA for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Before, proceeding further, I would like to invite the attention of the parties to the relevant provisions of sections 7 & 12 of the Contract Labour (Regulation & Abolition) Act, 1970, which reads as under:

> **"7. Registration of certain establishments.**—(1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment.....
>
> **12. Licensing of contractors.—(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.....**

21. As per the provisions of section 7 & 12 of the aforesaid Act, the principal employer i.e respondent no.1 should have a certificate of registration from the prescribed authority and secondly the contractor should have a licence issued by competent authority i.e the Labour Department to deploy the contract labour. On perusal of the evidence on record, it is clear that neither the principal employer had the certificate of registration from the prescribed authority nor the contractor had a licence issued by the competent authority. RW-1, Shri Parvinder Singh, Sr. Assistant ESD of respondent no.1, has categorically deposed that he cannot produce the licence obtained by the contractor to engage the services of the petitioner and the registration of the respondent obtained under Contract Labour (Regulation & Abolition) Act. He admitted that the petitioner had worked with the respondent no.1 through contractor. He stated that the petitioner was working under JE in the field.

22. Now, the determinative question which arises for consideration before this Court/Tribunal is as to whether the contract was sham, ingeniune and camouflage as contended by the Learned Counsel for the petitioner. As per the statement of claim, the petitioner was engaged by the respondent department through respondent no. 2 and he was under the direct control and supervision of concerned JE of the department.

23. It is by now well settled that if the industrial adjudicator finds the contract between the principal employer and the contract to be a sham, nominal and a camouflage to deny employment benefits to the employee, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. In (2009) 13 SCC titled as International Airport Authority of India Vs. International Air Cargo Workers Union and Anr., it has been held by the Hon'ble Apex Court as under:

> **"36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen**

is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.

37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary: who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee".

24. For the determination of the question as to whether the contract is a sham, ingenuine and camouflage and whether the concerned workers are the employees of the contractors or the principal employer, the Court is required to consider several factors. In AIR 2004, SC 1639, in case of Workmen of Nilgiri Co-operative Marketing Society Ltd. Vs. Sate of Tamil Nadu, the Hon'ble Apex Court has observed as under:

"37. The control test and the organization test, therefore, are not the only factors which can be said to decisive. With a view of elicit the answer, the court is required to consider several factors which would have a bearing on the result: (a) who is appointing authority; (b) who is the pay master: (c) who can dismiss; (d) how long alternative service lasts; (e) the extent of control and supervision; (f) the nature of the job, e.g, whether, it is professional or skilled work; (g) nature of establishment; (h) the right to reject. 38. With a view to find out reasonable solution in a problematic case of this nature, what is needed is an integrated approach meaning thereby integration of the relevant tests where for it may be necessary to examine as to whether the workman concerned was fully integrated into the employer's concern meaning thereby independent of the concern although attached therewith to some extent.

96. The decisions referred to hereinbefore are indicative of the fact that the different tests have been applied in different cases having regard to the nature of the problem arising in the fact situation obtaining therein. Emphasis on application of control test and organization test have been laid keeping in view the question as to whether the matter involves a contract of service vis-a-vis contract for service; or whether the employer had set up a contractor for the purpose of employment of workmen by way of a smoke screen with a view to avoid its statutory liability".

25. The Hon'ble High Court of Gujrat in case titled as Gujrat Majdoor Panchayat Vs State of Gujrat, spl civil application no. 8434 of 1990 lays down the parameters for narrowing down the contingency about employee-employer relationship, which reads as under:

"Even though principal employer may be registered employer and the contractor may be licensed contractor, and the workmen employed by him might be covered by the permissible number of employees as recognized by the license and even though such activities may be covered by a license, in fact and in substance, control including disciplinary control and supervision of the entire activity may be with the principal employer and the wages of the employees may in fact be coming out of coffers of the principal employer, and may be getting paid through the contractor who may operate as a mere conduit pipe. Such type of control, supervision and payment being outside the scope of section 10 (2) read with section 20 and 21 of the Contract Labour Act would give rise to the legitimate contention that the principal employer is in fact and substance the real employer and the so called contractor is an eye wash."

26. There is no enunciation on the point of law as held by the Hon'ble Apex Court and Hon'ble high Court in this regard.

27. As a binding precedent, bearing in mind the entire facts and circumstances and evidence on record, this Tribunal reaches to an inescapable conclusion that the petitioner was the employee of respondent department and there exists relationship of employee and employer between the parties. It is clear from the evidence on record that the petitioner was working under the supervision and control of the respondent no.1. The alleged contractor did not give any directions about the work to be carried out by the petitioner. Neither the contractor nor any representative remained present to give any instructions to the petitioner. There is no evidence on record to show and prove that the contractor or supervisors of the contractors were visiting the respondent department to supervise the work of petitioner. It is an admitted position on record that the petitioner was working under the guidance of JE of the respondent department in the field and the petitioner was doing all the activities of HPSEB in the field and it is the JE who was the incharge of the petitioner and who used to supervise his work. The respondent department had placed on record the tender (RW-1/B), office order (RW-1/C) to (RW-1/E), letters (RW-1/F) and (RW-1/G), contract (RW-1/H) and bills (RW-1/J) for the period from 09.02.2015 to September 2017 but there is no reference of the petitioner in the aforesaid bills. The petitioner has placed on record the copy of attendance register Mark PA. There is no evidence on record to suggest that the overall control and supervision on the services of the petitioner was that of contractor.

28. As observed earlier, the evidence, on record further shows that the respondent department had no certificate of registration and the alleged contractor did not have the necessary licence under the Contract Labour (Regulation and Abolition) Act to deploy the contract labour. There Lordships of Hon'ble Supreme Court in Secretary, Haryana State Electricity Board Vs. Suresh and other- AIR 1999 SUPREME COURT 1160, has observed that once the so called contractor was not a licensed contractor under the Act, the inevitable conclusion that had to be reached was to the effect that so called contract system was a mere camouflage, smoke screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the principal employer, on the one hand, and the employees, on the other, could be clearly visualized. In the present case, this is one added factor which shows that the contract is sham and bogus as the evidence on record shows that neither the respondent department had a certificate of registration nor the contractor had a licence at the relevant time. Admittedly, the petitioner had been continuously working since 2015 till 2017 with respondent no.1, therefore, it can safely be said that the petitioner is fully integrated in the establishment of the respondent.

29. Therefore, taking into consideration the above facts and various attending circumstances, it is clear that the contractor had no role to play so far as the petitioner is concerned and everything was supervised and controlled by the respondent department. All the facts would show that the contract was sham, nominal and a mere camouflage. The Hon'ble Apex Court in Steel Authority of India Ltd. and others Vs. National Union Waterfront Workers and others, (2001) 7 SCC-1, has held that if the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. The relevant extract of the aforesaid judgment reads as under:

> **"125 (5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade**

compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder".

30. In the case in hand, as observed earlier, it has been proved on record that the so called contract is not genuine but a mere camouflage as such the petitioner will have to be treated as the employees of the principal employer i.e the respondent department and he falls under the definition of "workman" as per section 2 (s) of the Act.

31. Admittedly, the petitioner has worked with the respondent department from May, 2015 till June, 2017 and thereafter his services have been terminated without issuing any notice and payment of compensation. There is also no dispute about the factum of completion of 240 working days by the petitioner with the respondent department. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the letter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified. Resultantly, the petitioner is held to be reinstated in service with seniority and continuity.

33. Now, the question arises as to as whether the petitioner is entitled for any back-wages or not? There is nothing on record which could go to show that after the termiantion, the petitioner was not gainfully employed. The petitioner has failed to discharge his burden by leading cogent and satisfactory evidence in this regard. Moreover, keeping in view the peculiar facts and circumstances of the case, I am of the considered opinion that the petitioner is not entitled to any back-wages. Accordingly, both these issues are partly decided in favour of the petitioner and against the respodnent No.1 (HPSEB).

Issue No. 3

34. In support of this issue no specific evidence has been led by the respdonent no.1, which could go to show that the petitioner has concealed material facts from this Court and has not come with clean hands. In the absence of any evidence on record, this issue is decided in favour of the petitioner and against the respodnent No.1.

RELIEF

35. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, directions are hereby passed to the respondent no.1 (HPSEB) for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity. However, the petitioner is not entitled to any back-wages. The reference is disposed off in the aforesaid terms.

36. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 56 of 2016

Instituted on : 13-07-2016

Decided on : 01-07-2023

Sunil Kumar s/o Shri Dhyan Singh, r/o Village Tharu, P.O. Shari, Tehsil Theog, District Shimla, H.P. . .*Petitioner.*

VERSUS

The Chief Executive Officer, Shimla Environment Heritage Conservation and Beautification Society (SEHB) Municipal Corporation Shimla, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R. K. Khidta, Advocate

For respondent : Shri Surender Chauhan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 30.05.2016, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as hereunder:

"Whether termination of the services of Sh. Sunil Kumar, s/o Shri Dhyan Singh, r/o Village Tharu, P.O. Shari, Tehsil Theog, District Shimla H. P. by the Chief Executive Officer, Shimla Environment Heritage Conservation and Beautification Society (SEHB) Municipal Corporation Shimla, H.P. w.e.f. 10.04.2013 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of reinstatement, back wages, compensation, seniority and other service benefits the above aggrieved worker is entitled to from the above employer/ society?"

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as supervisor in

SEHB Society under the Municipal Corporation Shimla, vide agreement dated 19.01.2011, purely on year basis. The agreement was renewed from year to year i.e. upto 2014. No supervisory powers were given to the petitioner as no one was working under him. The petitioner had worked continuously till 10.04.2013, when the petitioner was asked orally not to come for the job. When the petitioner asked about the reason then he has told that his conduct was not good. The services of the petitioner were terminated without giving any notice and issuing show cause notice. The petitioner has completed more than 240 working days in a calendar year. The respondent has violated the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner had also referred to the case law reported in 1988 (1) SLC-6 titled as Prem Kumar Versus State of HP, AIR 1976 SC-111 and AIR 1986 SC-458, in the claim petition.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

> **"It is, therefore most respectfully prayed that the reference may kindly be answered in affirmative and the employer may be directed to reengage/reinstate the workman petitioner in to service with all consequential benefits like continuity in service, back wages as well as seniority. The employer may further he directed to grant the regular status to the workman as his junior incumbents have already been regularized by the employer. The exemplary cost may also be awarded in favour of the workman and against the employer. Any other order which this Hon'ble court deems fit and proper in the facts and circumstances of the present case may kindly be passed in favour of the present workman and against the respondent/ employer."**

4. The lis was resisted and contested on behalf of respondent by filing written reply inter-alia preliminary objections of maintainability, cause of action and not come to the court with clean hands.

5. On merits, it is submitted that the petitioner had issued received Bearing No. 610270 dated 10.11.2012 and 0647993 dated 12.12.2012, which were issued as user collection charges, wherein it has been written ₹ 300/- in both the receipt whereas the petitioner submitted the carbon copy of the receipt to the respondent society wherein ₹ 200/- each were found mentioned by the petitioner. The act of the petitioner was intentional, malafide and against the under taking which was given by him during his employment. As per agreement, the petitioner has undertook that his services shall remained in force for a period of one year and will abide by the terms and conditions. It is mentioned at Sr. No. 9 of the agreement that in case the act, conduct and behavior shall not be to the satisfaction of the society in that eventuality the services of the petitioner shall be terminated automatically without issuing any notice. It is denied that the petitioner had completed 240 working days. It is, therefore, prayed that the claim filed by the petitioner being devoid of merits may kindly be dismissed.

6. Re-joinder has not been filed.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 02.08.2017, as under:

1. Whether the termination of the services of the petitioner w.e.f. 10.04.2013 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP* .

3. Whether the petition is not maintainable, as alleged? . .*OPR.*

4. Relief?

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	:	No
Issue no.2	:	Not entitled to any relief
Issue no.3	:	No
Relief	:	Reference is answered in negative, as per operative part of award.

REASONS FOR FINDINGS

Issues No.1 & 2:

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their final determination and adjudication.

12. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

13. In the cross-examination, he denied that he issued the original receipt to the owner worth ₹ 300/- and deposited ₹ 200/- as reflected in the carbon copy. He further denied that he signed the undertaking that in case of any misconduct he shall be removed from the service. He does not remember that surety bond to this effect was also fulfilled. He feigned ignorance that the society and the owner had suffered loss on account of issuance of forged receipts. He admitted that an agreement was executed between him and respondent. He denied that there was a condition in the agreement that in case of any embezzlement he shall be removed from the service. He admitted to have tendered apology to the respondent.

14. Shri Naresh Kumar, official of the respondent has stepped into the witness box as (PW-2), who deposed that as per the muster roll issued to the workers and supervisors, the petitioner had worked for 30 days in the month of January 2011, 28 days in the month of February 2011, 31 days in the month of March 2011, 30 days in the month of April 2011, 31 days in the month of May 2011, 30 days in the month of June, 2011, 31 days in the month of July 2011, 31 days in the month of August 2011, 30 days in the month of September 2011, 31 days in the month October 2011, 30 days in the month of November 2011, 30 days in the month of December 31 days, 2011, 31 days in the month January 2012, 29 days in the month of February 2012, 31 days in the month of March, 2012, 30 days in the month of April, 2012, 31 days in the month of May,

2012, 30 days in the month of June, 2012, 31 days in the month of July, 2012, 28 days in the month of August, 2012, 30 days in the month of September, 2012, 31 days in the month of October, 2012, 30 days in the month of November, 2012, 31 days in the month of December, 2012, 31 days in the month of January, 2013, 28 days in the month of February, 2013, 31 days in the month of March, 2013 and 11 days only in the month of April, 2013. In cross examination, he has stated that the requisitioned record was signed by the supervisor and maintained by the society.

15. To refute the allegations of the petitioner, the respondent had examined Shri Davinder Singh Pal, Project Coordinator-cum-Nodal Officer as (RW-1), and tendered into evidence his sworn in affidavit (RW-1/A), wherein he has reiterated almost all the averments as stated in the reply filed on behalf of respondent. He also tendered into evidence letter of termination (R-1), original receipt no. 610270 (R-2), carbon copy of receipt no. 610270 (R-3), original receipt no. 0647993 (R-4), carbon copy of receipt no. 0647993 (R-5), agreements Mark RX-1 and RX-2.

16. In cross-examination, he admitted that the petitioner had worked with the respondent since 2011 till 10.04.2013. He further admitted that the petitioner had completed 240 working days in preceding year. He explained that the petitioner was found in the embezzlement of government money by issuing the receipt but he deposited less money with the respondent. He denied that the signatures in the receipt are different. He admitted that the original receipt does not remain in the custody of M.C. He explained that it was issued to the concerned person and were collected from these persons later on. He denied that the receipt was not issued by the petitioner. He denied that no charges against the petitioner were proved.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Shri R. K. Khidta, Ld. Counsel for the petitioner has contended with all vehemence that the services of the petitioner had been terminated by the respondent without following the mandatory provisions of the Act. The petitioner had completed more than 240 days in each and every calendar year. He also argued that neither any inquiry was conducted nor any show cause notice was issued to him, which is totally against the provisions of the Act as no opportunity or being heard was afforded to the petitioner before terminating his services. It is, therefore, prayed that the claim petition filed by the petitioner may kindly be allowed with all consequential service benefits including full back-wages.

19. Per contra, Shri Surender Chauhan, Ld. Counsel for the respondent has strenuously argued that the services of the petitioner were terminated on account of embezzlement as the petitioner has misappropriated the Government money by issuing receipts Bearing No. 610270 dated 10.11.2012 and 0647993 dated 12.12.2012, which were issued as user collection charges, wherein it has been written ₹ 300/- in both the receipt whereas the petitioner submitted the carbon copy of the receipt to the respondent society wherein ₹ 200/-. He further argued that the act of the petitioner was intentional, malafide and against the undertaking, which was given by him during his employment. As per agreement, the petitioner has undertook that his services shall remained in force for a period of one year and will abide by the terms and conditions. It is mentioned at Sr. No. 9 of the agreement that in case the act, conduct and behavior shall not be to the satisfaction of the society in that eventuality the services of the petitioner shall be terminated automatically without issuing any notice. He prayed for the dismissal of the claim petition.

20. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

21. At the very out-set, without lamenting much on the merits of the case, the petitioner being master of his own case required to prove the pleadings as pleaded by him by way of instituting the claim petition alleging there by that he was engaged as supervisor vide agreement, purely on yearly basis and it was renewed for the year 2012 to 2014. The petitioner is also required to prove that he had completed 240 working days in a calendar year. All the pleadings in the form of claim petition were supported by the oral testimony of (PW-1) and (PW-2) but no documentary proof has been supplied on record. However, the perusal of agreement (RX-1), would clearly depicts that the service of the petitioner were engaged for one year as supervisor. Similarly, agreement dated 01.03.2013 (RX-2) demonstrated that the services of the petitioner were engaged for another year till 01.01.2014. As per the terms and conditions in the agreements (RX-1) and (RX-2), it is crystal clear that it is mentioned at serial no. 9 that in case the work, conduct and behavior of the petitioner were not found appropriate than his services shall be liable to be terminated without serving any notice and payment of compensation. Though, the petitioner had denied that he had issued receipt with two different amounts of ₹ 300/- & ₹ 200/-. However, he feigned ignorance that respondent society had suffered loss on account of issuance of forged receipts. He denied that in case of any embezzlement, his services are liable to be terminated. It is particular to mention that the petitioner had duly admitted that he tendered an unconditional apology to the respondent. According to him, he was not informed that his services are terminated but letter (RW-1), clearly established that the petitioner was issued the order dated 10.04.2013 regarding determination of the services on the ground of embezzlement, which also bears his signatures, as proved on record from (RW-1). An admission is always treated as the best evidence. The petitioner has duly admitted that he had tendered an apology for his act and conduct. The act and conduct on the part of the petitioner is writ large on record, whereby it is clearly established on record that the petitioner has not only manipulated the events but also indulged himself into an act of theft, embezzlement, misappropriation of funds etc. hence there arises no question of applicability of the provisions of section 25-F, 25-G and 25-H of the Act.

22. Verily, the petitioner, who is found to be indulged in an act of misappropriation of funds, which is quite apparent on the face of record from proving of receipts (R-2) and (R-3) and receipts (R-4) and (R-5), which clearly depicts that receipts (R-2) and (R-3), were issued for ₹ 300/- and its carbon copies (R-4) and (R-5), were issued for ₹ 200/-, each in the name of same person as user charges for garbage collection for the same date. Such an act on the part of the petitioner would clearly implicit the reflection to the act, conduct and behaviour of the petitioner, which absolutely shall not be to the satisfaction of the respondent society. Here, I may pause by terming all the eventuality of events to be termed as congegration of an act of fraud, whereby the petitioner by way of the present claim petition prayed for issuing the direction to the respondent to reengaged/reinstate the petitioner into service with all consequential benefits like continuity, seniority and back wages.

23. In the attendant set of facts, there is no allegation by the petitioner that he was not involved in an act of misappropriation of funds etc. It is settled law that fraud and justice never dwell together. In the case of United India Insurance Company Ltd. Vs. B. Rajendra Singh and others, JT 2000 (3) SC 151, considering the fact of fraud, Hon'ble Supreme Court held in paragraph 3 as under:

> **"Fraud and justice never dwell together." (Franset jusnunquam cohabitant) is a pristine maxim which has never lost its temper overall these centuries. Lord Denning observed in a language without equivocation that" no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything " (Lazarus Estate Ltd. V. Beasley 1956 (1) QB 702).**

24. In the case of Vice Chairman, Kendriya Vidyalaya Sangathan and Another Vs. Girdhari Lal Yadav, 2004 (6) SCC 325, Hon'ble Supreme Court considered the applicability of principles of natural justice in cases involving fraud and held in paragraph 12 as under :

"12. Furthermore, the respondent herein has been found guilty of an act of fraud. In opinion, no further opportunity of hearing is necessary to be afforded to him. It is not necessary to dwell into the matter any further as recently in the case of Ram Chandra Singh v. Savitri Devi this Court has noticed. "15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together.

16. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud".

25. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad."

26. **In Derry V. Peek (1889) 14 AC 337** it was held: "In an action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false. A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person make it liable to an action of deceit."

27. In the case of **Ram Chandra Singh Vs. Savitri Devi and others, 2003(8) SCC 319,** Hon'ble Supreme Court held in paragraphs 15, 16, 17, 18, 25 and 37 as under:

"15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together.

16. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res-judicata.

37. It will bear repetition to state that any order obtained by practicing fraud on court is also non-est in the eyes of law."

28. In the case of **S.P. Chengal Varaya Naidu (dead) by L.Rs Vs. Jagannath (dead) by L.Rs and others, AIR 1994 SC 853,** the Hon'ble Supreme Court held in para 7 as under:

> **"7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."**

29. In the case of **Jainendra Singh Vs. State of U.P., 2012 (8) SCC 748,** Hon'ble Supreme Court considered the fact of appointment obtained by fraud and held in para 29.1 to 29.10 as under:

> **"29.1 Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.**
>
> **29.2 Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find not desirable to appoint a person to a disciplined force can it be said to be unwarranted.**
>
> **29.3 When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.**
>
> **29.4 A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.**
>
> **29.5 Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.**
>
> **29.6 The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.**

29.7 The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

29.8 An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, in as much as such a situation would make a person undesirable or unsuitable for the post.

29.9 An employee in the uniformed service pre-supposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

29.10 The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable."

30. For the foregoing reason and also keeping in view the law laid down by the Hon'ble Supreme Court (supra), since the petitioner has involved himself in an act of misappropriation of funds much less to be termed as fraud, hence, this Tribunal comes to a conclusion that the services of the petitioner were rightly terminated by the respondent in terms of agreement, wherein it has been mentioned that in case the act, conduct and behaviour shall not be to the satisfaction of the society in that eventuality the services of the petitioner shall be terminated automatically without issuing any notice. The petitioner is not entitled to any relief from this Court/Tribunal. The issues in question are decided accordingly.

Issue No. 3:

31. In order to prove this issue, no evidence has been led by the respondent which could go to show that as to how the present petition is neither competent nor maintainable especially when the same was filed pursuant to the reference received from the appropriate government. I find nothing wrong with the present petition, which is perfectably maintainable. Accordingly, the issue in question is answered against the respondent company.

Relief:

32. As a sequittor, to my foregoing discussion and findings on issues no. 1 to 3, the claim filed by the petitioner sans merit and deserves dismissal and the same is hereby ordered to be dismissed. Resultantly, the reference sent by the appropriate government is answered in negative. The petitioner is not entitled to any relief from this Court/Tribunal.

33. Let a copy of this award be sent to the appropriate government for publication in the official gazette.

34. File, after completion, be consigned to records.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 36 of 2020

Instituted on : 09-03-2020

Decided on : 01-07-2023

Mahinder s/o Shri Sunder Lal, r/o Village & P.O. Jubla, Tehsil Arki, District Solan, H.P.
. .*Petitioner.*

VERSUS

The Divisional Forest Officer (D.F.O), Kunihar Forest Division Kunihar, Distt. Solan (H.P).

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C. Bhardwaj, Advocate

For respondent : Shri Prakash Thakur, Dy. DA.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 22.02.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as hereunder:

"Whether termination of the services of Sh. Mahinder s/o Shri Sunder Lal, r/o Village & P.O. Jubla, Tehsil Arki, District Solan, H.P. by the Divisional Forest Officer, Kunihar, Distt. Solan (H.P.) w.e.f. 03.05.2017 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as worker/labourer during the month of July, 2008 and was deployed to work at Bania Devi Forest Beat and Domehar beat and also worked in other forest beats under the command of respondent. The petitioner had worked continuously till his illegal termination on 02.05.2017 by the respondent. A demand notice was raised on 18.10.2017, as no muster roll was ever issued to him. The petitioner made several

request or issuing the muster roll but he was told that he has to work on bill basis otherwise he will not be allowed to work anymore. It is submitted that the service conditions of the petitioner has been changed during the pendency of reference petition no. 36 of 2020 and thereby contravened the provisions of section 33 of the Act. The petitioner had worked for more than 12 years by rendering continuous service for the purpose of section 25-B of the Act and he had worked for more than 240 working days in each calendar year. During the conciliation proceedings, the respondent has produced the muster roll, which have found the name of the petitioner in some of the muster rolls. It is evident on the face of record there has not been shown/given any working days during the seasonal period, which starts oftenly from the month of May to October in every year. Moreover, the working of the petitioner has been recorded in other months, which seems that the officials of the respondent department knowingly and purposely hiding the record of the petitioner and as such indulged in an act of unfair labour practices. The action of the respondent is illegal, null and void. The service of the petitioner were terminated without issuing any notice and paying retrenchment compensation as envisaged under Section 25-F of the Act. The service of junior workmen namely Shri Hiru Ram, Shri Beli Ram and Shri Jagdish were retained by the respondent there is a clear violation of sections 25-B, 25-F, 25-G and 25-H of the Act. The respondent has never offered an opportunity of being heard and further did not pay the retrenchment compensation to the petitioner while dismissing him from service.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

> **"Now, it is therefore prayed that your Honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent department with retrospective effect i. e. from the date of his illegal removal/ termination on 02.05.2017 with full back wages, seniority and other consequential service benefits throughout with costs"**

4. The lis was resisted and contested by filing written reply inter-alia preliminary objections of maintainability no cause of action and limitation have been raised.

5. On merits, it is denied that the petitioner was engaged during the month of July, 2008. However, as per record the petitioner worked as seasonal labourer during the year 2006 and worked for 120 days only. The petitioner had left the seasonal work at his own sweet will. It is denied that the petitioner was engaged as daily wager. It is submitted that as per the instructions of the Government of Himachal Pradesh vide letter dated 04.07.2009 quotations/ limited tenders are being invited for sessional forestry work. It is denied that the petitioner came to know that the muster-rolls are not being issued for the work as the works in the department are being conducted as per instructions of the Government. It is denied that the service conditions has been changed during the pendency of the reference petition. It is denied that the petitioner has worked for more than 240 working days in a calendar year. It is submitted that the petitioner had worked as seasonal labourer during the year 2006 only for 120 days and thereafter the petitioner had left the job. The petitioner had not completed 240 days in any of the calendar year. The petitioner had also work with the department on bill basis w.e.f. 3/2013 till 2/2018. It is denied that the services of the petitioner has been terminated by the department. No juniors of the petitioner has been retained in service. The respondent prayed for the dismissal of the claim.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply by reaffirming and reiterating the contents those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 05.06.2022, as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 02.05.2017 without complying the provisions of the Industrial Disputes Act, is illegal and unjustified? If yes, to what relief the petitioner is entitled to? . .*OPP.*

2. Whether the petition is not maintainable in the present form? . .*OPR* .

3. Whether there is no cause of action accrued in favour of the petitioner as alleged? . .*OPR.*

4. Whether the petition is barred by limitation as alleged? . .*OPR.*

5. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	:	No. Not entitled to any relief.
Issue no.2	:	No
Issue no. 3	:	No
Issue no.4	:	No
Relief.	:	Reference is answered in negative as per operative part of award.

REASONS FOR FINDINGS

Issue No.1:

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence reply filed before the Conciliation Officer by the respondent (P-1), mandays chart (P-2) and working detail and payments made to the petitioner (P-3).

12. In the cross-examination, he denied that he had worked as seasonal worker since 2006. Volunteered that he had worked on daily wage basis since 2004 continuously. He further denied that he had not completed 240 working days continuously during the years 2007 to 2009. He further denied that he had not worked from 2006 to 2012. He also denied that he had worked on quotation basis during 2013 to 2018. He denied that his services were not illegally terminated. He also denied that no junior person to him was retained by the department.

13. To refute the allegations of the petitioner, the respondent had examined Shri Raj Krishan Kaushal, Range Officer of respondent as (RW-1), who has tendered into evidence his

affidavit (RW-1/A), wherein he has reiterated almost all the averments as made thereto in the reply filed by the respondent. He also tendered in evidence authority letter (R-1), letter (R-2), notification (R-3), muster roll (R-4) and bills (R-5).

14. In cross-examination, he admitted to have filed the reply to the demand notice before the Conciliation Officer, Solan. He further admitted that the muster rolls were issued by the department, in which the petitioner was engaged as labourer on seasonal basis. He also admitted that the petitioner was not the worker of contractor. He admitted that notice was given to the petitioner from muster roll to quotation basis. He denied that the muster roll produced before the Conciliation Officer and before this Court are different. He further denied that the petitioner had worked continuously with the department and he was not shown to be engaged on muster roll intentionally. He admitted that the petitioner had abandoned the job himself. He also admitted that the petitioner had worked on bill basis as piece rate worker till 2017.

15. This is the entire oral and documentary evidence led from the side of both the parties.

16. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the services of the petitioner have been terminated illegally without following any sort of procedure and provisions of the Act. He further contended that the respondent in their reply filed before the Conciliation Officer has duly admitted that the petitioner had worked as seasonal worker but he was engaged as daily wager. No appointment letter had been issued to the petitioner. The respondent department had alleged that the petitioner was engaged through contractor but nothing has been placed on record. However, the respondent in cross-examination has admitted that the petitioner was never engaged through contractor. Firstly, the petitioner was engaged on muster roll basis but later on he was engaged on bill basis. It is a change in service without serving any notice under section 9-A of the Act. The instruction issued vide notification dated 04.07.2009, are not applicable in the case of the petitioner as he was engaged by the department in the year 2008 i.e. much before 2009. Ld. AR argued that before engaging the services of the petitioner on bill basis, the respondent department was duty bound to fulfill the requirement of section 9-A of the Act, which is mandatory in nature and non-compliance thereto is totally illegal. He argued that one hand the respondent is claiming the petitioner to be seasonal worker and on the other hand no notice was issued to him. The petitioner has completed more than 240 working days in every calendar year and the respondent had retained the persons who are junior to the petitioner, hence, there is a violation of sections 25-F, 25-G and 25-H of the Act. It is, therefore, prayed that the claim filed by the petitioner may kindly be allowed and the respondent may kindly be directed to re-engage the petitioner with seniority and continuity along-with full back-wages.

17. Per contra, Shri Prakash Thakur, Ld. Dy. DA for the respondent department has strenuously argued that the services of the petitioner were never terminated by the respondent rather he had left the job at his own. The petitioner was never engaged as daily wage labourer but he was engaged as seasonal worker to work in the forest nursery. The petitioner had worked with the respondent as seasonal worker during the year 2006 and thereafter he had left the job at his own sweet will. The petitioner had not completed 240 working days in any calendar year, hence, he is not entitled for the protection of section 25-F of the Act. Ld. Dy. DA argued that the petitioner had again approached the respondent department for works after a lapse of more than seven years, hence, as per the instruction of government, he was again engaged as seasonal worker on bill basis. No juniors to the petitioner have been retained or engaged by the respondent. He prayed for the dismissal of the claim petition.

18. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner and Ld. Dy. DA for the respondent department and have also scrutinized the entire case record with minute care, caution and circumspection.

19. Thus, from a careful examination of entire case record, it is manifestly clear on record that as per the case set up from the side of the petitioner is not at all relating to the termination but change in the condition of service of the petitioner, whereby the respondent has offered the work to the petitioner on bill basis from March, 2013. Ld. AR for the petitioner argued that the action of the respondent in changing the working conditions w.e.f. March, 2013, by offering work on bill basis which will tantamount to the cession of work and as such will fall within the definition of section 2-oo of the Act. On the other hand, Ld. Dy. DA for the respondent has contended that neither the petitioner was engaged on daily wages basis nor as a contingent paid employee. The petitioner was engaged on seasonal basis who had worked as sessional labourer during the year 2006 in which year, he had worked only for 120 days and thereafter the petitioner had left the job.

20. Admittedly, the petitioner was engaged on seasonal basis and he had worked on muster roll in the year 2006 and he had worked only for 120 days and thereafter the petitioner had left the job and thereafter the petitioner was engaged purely on bill basis w.e.f. March, 2013 and worked on quotation/limited tender basis till Feb., 2018. Though, the petitioner has alleged that he was engaged in the year 2004 and had worked continuously till Feb., 2018. There is no spec of doubt about the fact that the petitioner had worked with the respondent department initially on muster roll basis w.e.f. the year 2006 and thereafter the petitioner had worked with the respondent purely on bill basis w.e.f. March, 2013 till Feb., 2018, which fact has been satisfactorily proved on record. The aforesaid facts makes it abundantly clear on record that the petitioner had left the job in the year 2007 and thereafter again started working with the respondent on bill basis. The petitioner had tried his level best to portray that he was in continuous service with the respondent department. It is also the contention of the petitioner that since there was change in the service condition as no notice before engaging the petitioner, on bill basis has been served upon him, as envisaged under section 9-A of the Act.

21. Both the contentions raised at bar from the side of the petitioner that he was engaged on daily wage basis and not as seasonal worker and he had completed 240 working days in every calendar year and secondly after March, 2013, the work in which the petitioner was deployed was based on budgetary allocation, made by the respondent. Though, the plea of seasonal work has been raised halfheartedly in the pleadings and in fact no evidence has been led in this behalf by the petitioner that he was engaged on daily wage basis and had worked continuously for 240 working days. The pleadings in the absence of cogent and clinching proof goes straightway.

22. So far as concerning the deployment based on the budgetary allocation, the respondent has mainly placed reliance to the notifications dated 11.07.1995 and 4.7.2009, issued by the State Government. As per the notification dated 11.07.1995, it is envisaged that the employees who had been engaged on daily wage basis, skilled or unskilled who have completed 10 years or more continuous service with a minimum of 240 working days in a calendar year, as on 31.3.1995 would be regularized w.e.f. 01.04.1995, only upto the number of posts available in the respective department. Accordingly, as per notification dated 04.07.2009, the Government has decided that in future, no contingent paid employee be engaged otherwise it will be personal responsibility of concerned official/officer.

23. Verily, in the attendant facts and circumstances of the case, the petitioner has miserably failed to prove his case by leading cogent and satisfactory evidence on record, which could go to legitimately established on record that the petitioner had actually completed 240 working prior to his alleged termination. The plea raised from the side of the petitioner regarding the change in the service condition from muster roll to bill basis is again not established on record. All the contentions raised at bar are devoid of merit. The petitioner being master of his case must prove his case by leading cogent and clinching evidence. The petitioner cannot take the benefit or undue advantage out of the weakness of the respondent's case. The bare readings of the

notifications, as aforesaid, the services of those workers have been regularized who have completed 8/10 years of continuous service with successful completion of 240 working days in every calendar year. Admittedly, the petitioner had failed to prove on record that he had completed 240 working in a calendar year preceding his termination, hence, the case of the petitioner does not fairly and securely covered under the provisions of section 25-F of the Act. Similarly, the petitioner has failed to prove on record that he had been working continuously with the respondent from 2006 till March, 2013 and thereafter his services have been engaged on bill basis. In the absence of any cogent evidence on record, it cannot be said that the respondent department had violated the provisions of section 9-A of the Act.

24. So far as concerning the contention raised by the petitioner regarding unfair labour practice as envisaged under section 2-ra of the Act, illegal termination of the petitioner, which will fall under the definition of section 2-oo of the Act, as well as noncompliance of sections 25-B, 25-F, 25-G and 25-H of the Act, at the cost of repetition, it is the petitioner one who alleges must prove the said fact on record, but in the instant case the petitioner has failed to prove said factum on record by leading cogent and satisfactory evidence. The petitioner has not completed 240 working days in a calendar year. Even, if for the sake of arguments it is assumed that the petitioner had worked as seasonal workers on muster roll and bills basis, the law is very clear that he must have complete 240 working days in 12 calendar months preceding his termination but he has failed to establish this fact on record.

25. For the foregoing reasons and keeping inview my aforesaid discussion, this Tribunal concludes that the petitioner has failed to prove on record that his services have been illegally terminated by the respondent department. Therefore, he is not entitled to any relief. The issue in question is answered in negative.

Issue No. 2:

26. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is not maintainable especially when the same has been presented before the Court pursuance to the reference notification received from the appropriate government. I find, nothing wrong with this petition, which is perfectly maintainable in the present form. The issue in question is answered in negative.

Issue No. 3:

27. In support of this issue no evidence has been led by the respondent, which could go to show that there is no cause of action accrued in favour of the petitioner. Since, I have already held under issue no.1, that the petitioner had worked as seasonal worker with the respodnent, hence, there exists cause of action in his favour. The issue in question is answered in negative.

Issue No. 4:

28. At the time of arguments, Ld. Dy. DA for the respondent could not explain as to how this petition is barred by limitation. There lordships of Hon'ble Supreme Court in *(1999) 6 SCC 82, Ajayab singh Vs. Sirhind Co-operative Marketing–cum-processing Service Society Limited and Another* have held as under:

> *"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of*

fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

Consequently, inview of law laid down by the Hon'ble Apex Court, I hold that this petition is not time barred to which my answer is in negative.

Relief:

29. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1 to 4, the merits of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the present reference is answered in negative by holding that the petitioner is not entitled to any relief. The petitioner is not entitled for any sort of relief from this Court/Tribunal.

30. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 47 of 2020

Instituted on : 04-03-2020

Decided on : 01-07-2023

Devender Kumar s/o Shri Ishwar Dass, r/o Village Kaunit (Hardevpur), P.O. Jubla, Tehsil Arki, District Solan, H.P. . .*Petitioner.*

VERSUS

The Divisional Forest Officer (D.F.O), Kunihar Forest Division Kunihar, Distt. Solan (HP). . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J. C. Bhardwaj, Advocate

For respondent : Shri Prakash Thakur, Dy. DA.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 26.02.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as hereunder:

"Whether termination of the services of Sh. Devender Kumar s/o Shri Ishwar Dass, r/o Village Kaunit (Hardevpur), P.O. Jubla, Tehsil Arki, District Solan, H.P. by the Divisional Forest Officer, Kunihar, Distt. Solan (H.P.) w.e.f. 02.09.2018 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as worker/labourer during the year 2005 and was deployed to work at Bania Devi Forest Beat and Domehar beat and also worked in other forest beats under the command of respondent. The petitioner had worked continuously till his illegal termination on 02.09.2018 by the respondent. A demand notice was raised on 06.09.2018, as no muster roll was ever issued to him. The petitioner made several request or issuing the muster roll but he was told that he has to work on bill basis otherwise he will not be allowed to work anymore. It is submitted that the service conditions of the petitioner has been changed during the pendency of reference petition no. 47 of 2020 and thereby contravened the provisions of section 33 of the Act. The petitioner had worked for more than 15 years by rendering continuous service for the purpose of section 25-B of the Act and he had worked for more than 240 working days in each calendar year. During the conciliation proceedings, the respondent has produced the muster roll, which have found the name of the petitioner in some of the muster rolls. It is evident on the face of record there has not been shown/given any working days during the seasonal period, which starts oftenly from the months of May to October in every year. Moreover, the working of the petitioner has been recorded in other months, which seems that the officials of the respondent department knowingly and purposely hiding the record of the petitioner and as such indulged in an act of unfair labour practices. The action of the respondent is illegal, null and void. The service of the petitioner were terminated without issuing any notice and paying retrenchment compensation as envisaged under Section 25-F of the Act. The service of junior workmen namely Shri Hiru Ram, Shri Beli Ram and Shri Jagdish were retained by the respondent there is a clear violation of sections 25-B, 25-F, 25-G and 25-H of the Act. The respondent has never offered an opportunity of being heard and further did not pay the retrenchment compensation to the petitioner while dismissing him from service.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

"Now, it is therefore prayed that your Honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent department with retrospective effect i.e. from the date of his illegal removal/ termination on 02.09.2018 with full back wages, seniority and other consequential service benefits throughout with costs"

4. The lis was resisted and contested by filing written reply inter-alia preliminary objections of maintainability no cause of action and limitation have been raised.

5. On merits, it is denied that the petitioner was engaged during the year, 2005. However, as per record the petitioner worked as seasonal labourer during the year 2006. The petitioner had

left the seasonal work at his own sweet will. It is denied that the petitioner was engaged as daily wager. It is submitted that as per the instructions of the Government of Himachal Pradesh vide letter dated 04.07.2009 quotations/ limited tenders are being invited for sessional forestry work. It is denied that the petitioner came to know that the muster-rolls are not being issued for the work as the works in the department are being conducted as per instructions of the Government. It is denied that the service conditions has been changed during the pendency of the reference petition. It is denied that the petitioner has worked for more than 240 working days in a calendar year. It is submitted that the petitioner had worked as seasonal labourer during the year 2006 for 72 days, 59 days in 2007 and 87 days in 2008 and thereafter the petitioner had left the job. The petitioner had not completed 240 days in any of the calendar year. The petitioner had also work with the department on bill basis w.e.f. 06/2009 till 08/2018. It is denied that the services of the petitioner has been terminated by the department. No juniors of the petitioner has been retained in service. The respondent prayed for the dismissal of the claim.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply by reaffirming and reiterating the contents those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 06.05.2022, as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 02.09.2018 without complying the provisions of the Industrial Disputes Act, is illegal and unjustified? If yes, to what relief the petitioner is entitled to? . .*OPP.*

2. Whether the petition is not maintainable in the present form? . .*OPR.*

3. Whether there is no cause of action accrued in favour of the petitioner as alleged? . .*OPR.*

4. Whether the petition is barred by limitation as alleged? . .*OPR.*

5. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	:	No. Not entitled to any relief.
Issue no.2	:	No.
Issue no. 3	:	No.
Issue no.4	:	No.
Relief	:	Reference is answered in negative as per operative part of award.

REASONS FOR FINDINGS

Issue No.1 :

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence reply filed before the Conciliation Officer by the respondent (P-1), mandays chart (P-2) and working detail and payments made to the petitioner (P-3).

12. In the cross-examination, he denied that he started working as seasonal labourer since 2006 to 2008. Volunteered that he had worked on daily wage basis since 2006 continuously. He further denied that he had not completed 240 working days continuously during the period 2006 to 2008. He further denied that he had not worked from 2008 to June 2009. He also denied that he had worked on quotation basis during 2009 to 2018. He denied that his services were not illegally terminated. He also denied that no junior person to him was retained by the department.

13. To refute the allegations of the petitioner, the respondent had examined Shri Raj Krishan Kaushal, Range Officer of respondent as (RW-1), who has tendered into evidence his affidavit (RW-1/A), wherein he has reiterated almost all the averments as made thereto in the reply filed by the respondent. He also tendered in evidence authority letter (R-1), letter (R-2), notification (R-3). Mandays chart (R-4), muster roll (R-5) and bills (R-6).

14. In cross-examination, he admitted to have filed the reply to the demand notice before the Conciliation Officer, Solan. He further admitted that the muster rolls were issued by the department, in which the petitioner was engaged as labourer on seasonal basis. He also admitted that the petitioner was not the worker of contractor. He admitted that notice was given to the petitioner from muster roll to quotation basis. He denied that the muster roll produced before the Conciliation Officer and before this Court are different. He further denied that the petitioner had worked continuously with the department and he was not shown to be engaged on muster roll intentionally. He admitted that the petitioner had abandoned the job himself. He also admitted that the petitioner had worked on bill basis as piece rate worker till 2018.

15. This is the entire oral and documentary evidence led from the side of both the parties.

16. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the services of the petitioner have been terminated illegally without following any sort of procedure and provisions of the Act. He further contended that the respondent in their reply filed before the Conciliation Officer has duly admitted that the petitioner had worked as seasonal worker but he was engaged as daily wager. No appointment letter had been issued to the petitioner. The respondent department had alleged that the petitioner was engaged through contractor but nothing has been placed on record. However, the respondent in cross-examination has admitted that the petitioner was never engaged through contractor. Firstly, the petitioner was engaged on muster roll basis but later on he was engaged on bill basis. It is a change in service without serving any notice under section 9-A of the Act. The instruction issued vide notification dated 04.07.2009, are not applicable in the case of the petitioner as he was engaged by the department in the year 2005 i.e. much before 2009. Ld. AR argued that before engaging the services of the petitioner on bill basis, the respondent department was duty bound to fulfill the requirement of section 9-A of the Act, which is mandatory in nature and non-compliance thereto is totally illegal. He argued that one hand the respondent is claiming the petitioner to be seasonal worker and on the other hand no notice was issued to him. The petitioner has completed more than 240 working days in every calendar year and the respondent had retained the persons who are junior to the petitioner, hence, there is a violation

of sections 25-F, 25-G and 25-H of the Act. It is, therefore, prayed that the claim filed by the petitioner may kindly be allowed and the respondent may kindly be directed to re-engage the petitioner with seniority and continuity along-with full back-wages.

17. Per contra, Shri Prakash Thakur, Ld. Dy. DA for the respondent department has strenuously argued that the services of the petitioner were never terminated by the respondent rather he had left the job at his own. The petitioner was never engaged as daily wage labourer but he was engaged as seasonal worker to work in the forest nursery. The petitioner had worked with the respondent as seasonal worker till the year 2008 and thereafter he had left the job at his own sweet will. The petitioner had not completed 240 working days in any calendar year, hence, he is not entitled for the protection of section 25-F of the Act. Ld. Dy. DA argued that the petitioner had again approached the respondent department for works after a lapse of more than four years, hence, as per the instruction of government, he was again engaged as seasonal worker on bill basis. No juniors to the petitioner have been retained or engaged by the respondent. He prayed for the dismissal of the claim petition.

18. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner and Ld. Dy. DA for the respondent department and have also scrutinized the entire case record with minute care, caution and circumspection.

19. Thus, from a careful examination of entire case record, it is manifestly clear on record that as per the case set up from the side of the petitioner is not at all relating to the termination but change in the condition of service of the petitioner, whereby the respondent has offered the work to the petitioner on bill basis from June, 2009. Ld. AR for the petitioner argued that the action of the respondent in changing the working conditions w.e.f. June, 2013, by offering work on bill basis which will tantamount to the cession of work and as such will fall within the definition of section 2-oo of the Act. On the other hand, Ld. Dy. DA for the respondent has contended that neither the petitioner was engaged on daily wages basis nor as a contingent paid employee. The petitioner was engaged on seasonal basis who had worked as sessional labourer during the year 2006 for 72 days, 59 days in 2007 and 87 days in 2008 and thereafter the petitioner had left the job.

20. Admittedly, the petitioner was engaged on seasonal basis and he had worked on muster roll in the year 2006 and had worked for 72 days in the year 2006, 59 days in 2007 and 87 days in 2008 and thereafter the petitioner was engaged purely on bill basis w.e.f. June, 2009 and worked on quotation/limited tender basis till 2018. Though, the petitioner has alleged that he was engaged in the year 2006 and had worked continuously till August, 2018. There is no spec of doubt about the fact that the petitioner had worked with the respondent department initially on muster roll basis w.e.f. the year 2006 till 2008 and thereafter the petitioner had worked with the respondent purely on bill basis w.e.f. June, 2009 till August, 2018, which fact has been satisfactorily proved on record. The aforesaid facts makes it abundantly clear on record that the petitioner had left the job in the year 2008 and thereafter again started working with the respondent on bill basis. The petitioner had tried his level best to portray that he was in continuous service with the respondent department. It is also the contention of the petitioner that since there was change in the service condition as no notice before engaging the petitioner, on bill basis has been served upon him, as envisaged under section 9-A of the Act.

21. Both the contentions raised at bar from the side of the petitioner that he was engaged on daily wage basis and not as seasonal worker and he had completed 240 working days in every calendar year and secondly after June, 2009, the work in which the petitioner was deployed was based on budgetary allocation, made by the respondent. Though, the plea of seasonal work has been raised halfheartedly in the pleadings and in fact no evidence has been led in this behalf by the

petitioner that he was engaged on daily wage basis and had worked continuously for 240 working days. The pleadings in the absence of cogent and clinching proof goes straightway.

22. So far as concerning the deployment based on the budgetary allocation, the respondent has mainly placed reliance to the notifications dated 11.07.1995 and 4.7.2009, issued by the State Government. As per the notification dated 11.07.1995, it is envisaged that the employees who had been engaged on daily wage basis, skilled or unskilled who have completed 10 years or more continuous service with a minimum of 240 working days in a calendar year, as on 31.3.1995 would be regularized w.e.f. 01.04.1995, only upto the number of posts available in the respective department. Accordingly, as per notification dated 04.07.2009, the Government has decided that in future, no contingent paid employee be engaged otherwise it will be personal responsibility of concerned official/officer.

23. Verily, in the attendant facts and circumstances of the case, the petitioner has miserably failed to prove his case by leading cogent and satisfactory evidence on record, which could go to legitimately established on record that the petitioner had actually completed 240 working prior to his alleged termination. The plea raised from the side of the petitioner regarding the change in the service condition from muster roll to bill basis is again not established on record. All the contentions raised at bar are devoid of merit. The petitioner being master of his case must prove his case by leading cogent and clinching evidence. The petitioner cannot take the benefit or undue advantage out of the weakness of the respondent's case. The bare readings of the notifications, as aforesaid, the services of those workers have been regularized who have completed 8/10 years of continuous service with successful completion of 240 working days in every calendar year. Admittedly, the petitioner had failed to prove on record that he had completed 240 working in a calendar year preceding his termination, hence, the case of the petitioner does not fairly and securely covered under the provisions of section 25-F of the Act. Similarly, the petitioner has failed to prove on record that he had been working continuously with the respondent from 2006 till 2008 and thereafter his services have been engaged on bill basis. In the absence of any cogent evidence on record, it cannot be said that the respondent department had violated the provisions of section 9-A of the Act.

24. So far as concerning the contention raised by the petitioner regarding unfair labour practice as envisaged under section 2-ra of the Act, illegal termination of the petitioner, which will fall under the definition of section 2-oo of the Act, as well as noncompliance of sections 25-B, 25-F, 25-G and 25-H of the Act, at the cost of repetition, it is the petitioner one who alleges must prove the said fact on record, but in the instant case the petitioner has failed to prove said factum on record by leading cogent and satisfactory evidence. The petitioner has not completed 240 working days in a calendar year. Even, if for the sake of arguments it is assumed that the petitioner had worked as seasonal workers on muster roll and bills basis, the law is very clear that he must have complete 240 working days in 12 calendar months preceding his termination but he has failed to establish this fact on record.

25. For the foregoing reasons and keeping inview my aforesaid discussion, this Tribunal concludes that the petitioner has failed to prove on record that his services have been illegally terminated by the respondent department. Therefore, he is not entitled to any relief. The issue in question is answered in negative.

Issue No. 2.

26. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is not maintainable especially when the same has been presented before the Court pursuance to the reference notification received from the

appropriate government. I find, nothing wrong with this petition, which is perfectly maintainable in the present form. The issue in question is answered in negative.

Issue No.3 :

27. In support of this issue no evidence has been led by the respondent, which could go to show that there is no cause of action accrued in favour of the petitioner. Since, I have already held under issue no.1, that the petitioner had worked as seasonal worker with the respodnent, hence, there exists cause of action in his favour. The issue in question is answered in negative.

Issue No. 4 :

28. At the time of arguments, Ld. Dy. DA for the respondent could not explain as to how this petition is barred by limitation. There lordships of Hon'ble Supreme Court in *(1999) 6 SCC 82, Ajayab Singh Vs. Sirhind Co-operative Marketing–cum-processing Service Society Limited and Another* have held as under:

> *"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone."*

Consequently, inview of law laid down by the Hon'ble Apex Court, I hold that this petition is not time barred to which my answer is in negative.

Relief :

29. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1 to 4, the merits of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the present reference is answered in negative by holding that the petitioner is not entitled to any relief. The petitioner is not entitled for any sort of relief from this Court/Tribunal.

30. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 48 of 2020

Instituted on : 04-03-2020

Decided on : 01-07-2023

Bali Ram s/o Shri Babu Ram, r/o Village Braven, P.O. Jubla, Tehsil Arki, District Solan, H.P. . .*Petitioner.*

VERSUS

The Divisional Forest Officer (D.F.O), Kunihar Forest Division Kunihar, Distt. Solan (HP). . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C. Bhardwaj, Advocate

For respondent : Shri Prakash Thakur, Dy. DA.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 26.02.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as hereunder:

"Whether termination of the services of Sh. Bali Ram s/o Shri Babu Ram, r/o Village Braven, P.O. Jubla, Tehsil Arki, District Solan, H.P. by the Divisional Forest Officer, Kunihar, Distt. Solan (H.P.) w.e.f. 02.05.2017 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as worker/labourer during the month of April, 1999 and was deployed to work at Bania Devi Forest Beat and Domehar beat and also worked in other forest beats under the command of respondent. The petitioner had worked continuously till his illegal termination on 02.05.2017 by the respondent. A demand notice was raised on 18.10.2017, as no muster roll was ever issued to him. The petitioner made several request or issuing the muster roll but he was told that he has to work on bill basis otherwise he will not be allowed to work anymore. It is submitted that the service conditions of the petitioner has been changed during the pendency of reference petition no. 48 of 2020 and thereby contravened the provisions of section 33 of the Act. The petitioner had worked for more than 21 years by rendering continuous service for the purpose of section 25-B of the Act and he had worked for more than 240 working days in each calendar year. During the conciliation proceedings, the respondent has produced the muster roll, which have found the name of the petitioner in some of the muster rolls. It is evident on the face of record there has not been shown/given any working days during the seasonal period, which starts oftenly from the month of May to October in every year. Moreover, the working of the petitioner has been recorded in other months, which seems that the officials of

the respondent department knowingly and purposely hiding the record of the petitioner and as such indulged in an act of unfair labour practices. The action of the respondent is illegal, null and void. The service of the petitioner were terminated without issuing any notice and paying retrenchment compensation as envisaged under Section 25-F of the Act. The service of junior workmen namely Shri Hiru Ram, Shri Beli Ram and Shri Jagdish were retained by the respondent there is a clear violation of sections 25-B, 25-F, 25-G and 25-H of the Act. The respondent has never offered an opportunity of being heard and further did not pay the retrenchment compensation to the petitioner while dismissing him from service.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

> **"Now, it is therefore prayed that your Honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent department with retrospective effect i.e. from the date of his illegal removal/ termination on 02.05.2017 with full back wages, seniority and other consequential service benefits throughout with costs"**

4. The lis was resisted and contested by filing written reply inter-alia preliminary objections of maintainability no cause of action and limitation have been raised.

5. On merits, it is denied that the petitioner was engaged during the month of April, 1999. However, as per record the petitioner worked as seasonal labourer during the year 1999. The petitioner had left the seasonal work at his own sweet will. It is denied that the petitioner was engaged as daily wager. It is submitted that as per the instructions of the Government of Himachal Pradesh vide letter dated 04.07.2009 quotations/ limited tenders are being invited for sessional forestry work. It is denied that the petitioner came to know that the muster-rolls are not being issued for the work as the works in the department are being conducted as per instructions of the Government. It is denied that the service conditions has been changed during the pendency of the reference petition. It is denied that the petitioner has worked for more than 240 working days in a calendar year. It is submitted that the petitioner had worked as seasonal labourer during the year 1999 for 24 days, 24 days during 2000, 85 days during 2003, 91 days during 2004, 88 days during 2005, 135 days during 2006, 62 days during 2007 and 110 days during 2008 and thereafter the petitioner had left the job. The petitioner had not completed 240 days in any of the calendar year. The petitioner had also work with the department on bill basis w.e.f. 12/2013 till 3/2018. It is denied that the services of the petitioner has been terminated by the department. No juniors of the petitioner has been retained in service. The respondent prayed for the dismissal of the claim.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply by reaffirming and reiterating the contents those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 06.05.2022, as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 02.05.2017 without complying the provisions of the Industrial Disputes Act, is illegal and unjustified? If yes, to what relief the petitioner is entitled to? . .*OPP.*

2. Whether the petition is not maintainable in the present form? . .*OPR* .

3. Whether there is no cause of action accrued in favour of the petitioner as alleged? . .*OPR.*

4. Whether the petition is barred by limitation as alleged? . .*OPR.*

5. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	:	No. Not entitled to any relief
Issue no.2	:	No
Issue no. 3	:	No
Issue no.4	:	No
Relief	:	Reference is answered in negative as per operative part of award.

REASONS FOR FINDINGS

Issue No.1 :

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence reply filed before the Conciliation Officer by the respondent (P-1), mandays chart (P-2) and working detail and payments made to the petitioner (P-3).

12. In the cross-examination, he denied that he had work as seasonal worker in the years 1999, 2000, 2003 to 2008. Volunteered that he had worked on daily wage basis since 1999 continuously. He further denied that he had not completed 240 working days continuously during the period 1999 to 2008. He further denied that he had not worked from 2009 to 2013. He also denied that he had worked on quotation basis during 2013 to 2018. He denied that his services were not illegally terminated. He also denied that no junior person to him was retained by the department.

13. To refute the allegations of the petitioner, the respondent had examined Shri Raj Krishan Kaushal, Range Officer of respondent as (RW-1), who has tendered into evidence his affidavit (RW-1/A), wherein he has reiterated almost all the averments as made there to in the reply filed by the respondent. He also tendered in evidence authority letter (R-1), letter (R-2), notification (R-3). muster roll (R-4) and bills (R-5).

14. In cross-examination, he admitted to have filed the reply to the demand notice before the Conciliation Officer, Solan. He further admitted that the muster rolls were issued by the department, in which the petitioner was engaged as labourer on seasonal basis. He also admitted that the petitioner was not the worker of contractor. He admitted that notice was given to the

petitioner from muster roll to quotation basis. He denied that the muster roll produced before the Conciliation Officer and before this Court are different. He further denied that the petitioner had worked continuously with the department and he was not shown to be engaged on muster roll intentionally. He admitted that the petitioner had abandoned the job himself. He also admitted that the petitioner had worked on bill basis as piece rate worker till 2018.

15. This is the entire oral and documentary evidence led from the side of both the parties.

16. Shri J.C Bhardwaj, AR for the petitioner has contended with all vehemence that the services of the petitioner have been terminated illegally without following any sort of procedure and provisions of the Act. He further contended that the respondent in their reply filed before the Conciliation Officer has duly admitted that the petitioner had worked as seasonal worker but he was engaged as daily wager. No appointment letter had been issued to the petitioner. The respondent department had alleged that the petitioner was engaged through contractor but nothing has been placed on record. However, the respondent in cross-examination has admitted that the petitioner was never engaged through contractor. Firstly, the petitioner was engaged on muster roll basis but later on he was engaged on bill basis. It is a change in service without serving any notice under section 9-A of the Act. The instruction issued vide notification dated 04.07.2009, are not applicable in the case of the petitioner as he was engaged by the department in the year 1999 i.e much before 2009. Ld. AR argued that before engaging the services of the petitioner on bill basis, the respondent department was duty bound to fulfill the requirement of section 9-A of the Act, which is mandatory in nature and non-compliance thereto is totally illegal. He argued that one hand the respondent is claiming the petitioner to be seasonal worker and on the other hand no notice was issued to him. The petitioner has completed more than 240 working days in every calendar year and the respondent had retained the persons who are junior to the petitioner, hence, there is a violation of sections 25-F, 25-G and 25-H of the Act. It is, therefore, prayed that the claim filed by the petitioner may kindly be allowed and the respondent may kindly be directed to re-engage the petitioner with seniority and continuity along-with full back-wages.

17. Per contra, Shri Prakash Thakur, Ld. Dy. DA for the respondent department has strenuously argued that the services of the petitioner were never terminated by the respondent rather he had left the job at his own. The petitioner was never engaged as daily wage labourer but he was engaged as seasonal worker to work in the forest nursery. The petitioner had worked with the respondent as seasonal worker till the year 2008 and thereafter he had left the job at his own sweet will. The petitioner had not completed 240 working days in any calendar year, hence, he is not entitled for the protection of section 25-F of the Act. Ld. Dy. DA argued that the petitioner had again approached the respondent department for works after a lapse of more than four years, hence, as per the instruction of government, he was again engaged as seasonal worker on bill basis. No juniors to the petitioner have been retained or engaged by the respondent. He prayed for the dismissal of the claim petition.

18. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner and Ld. Dy. DA for the respondent department and have also scrutinized the entire case record with minute care, caution and circumspection.

19. Thus, from a careful examination of entire case record, it is manifestly clear on record that as per the case set up from the side of the petitioner is not at all relating to the termination but change in the condition of service of the petitioner, whereby the respondent has offered the work to the petitioner on bill basis from December, 2013. Ld. AR for the petitioner argued that the action of the respondent in changing the working conditions w.e.f. December, 2013, by offering work on bill basis which will tantamount to the cession of work and as such will fall within the definition of section 2-oo of the Act. On the other hand, Ld. Dy. DA for the respondent has contended that

neither the petitioner was engaged on daily wages basis nor as a contingent paid employee. The petitioner was engaged on seasonal basis who had worked as sessional labourer during the year 1999 for 24 days, 24 days during 2000, 85 days during 2003, 91 days during 2004, 88 days during 2005, 135 days during 2006, 62 days during 2007 and 110 days during 2008 and thereafter the petitioner had left the job.

20. Admittedly, the petitioner was engaged on seasonal basis and he had worked on muster roll in the year 1999 for 24 days, 24 days during 2000, 85 days during 2003, 91 days during 2004, 88 days during 2005, 135 days during 2006, 62 days during 2007 and 110 days during 2008 and thereafter the petitioner had left the job and thereafter the petitioner was engaged purely on bill basis w.e.f. December, 2013 and worked on quotation/limited tender basis till March, 2018. Though, the petitioner has alleged that he was engaged in the year 1999 and had worked continuously till March 2018. There is no spec of doubt about the fact that the petitioner had worked with the respondent department initially on muster roll basis w.e.f. the year 1999 till 2008 and thereafter the petitioner had worked with the respondent purely on bill basis w.e.f. December 2013 till March, 2018, which fact has been satisfactorily proved on record. The aforesaid facts makes it abundantly clear on record that the petitioner had left the job in the year 2008 and thereafter again started working with the respondent on bill basis. The petitioner had tried his level best to portray that he was in continuous service with the respondent department. It is also the contention of the petitioner that since there was change in the service condition as no notice before engaging the petitioner, on bill basis has been served upon him, as envisaged under section 9-A of the Act.

21. Both the contentions raised at bar from the side of the petitioner that he was engaged on daily wage basis and not as seasonal worker and he had completed 240 working days in every calendar year and secondly after March 2023, the work in which the petitioner was deployed was based on budgetary allocation, made by the respondent. Though, the plea of seasonal work has been raised halfheartedly in the pleadings and in fact no evidence has been led in this behalf by the petitioner that he was engaged on daily wage basis and had worked continuously for 240 working days. The pleadings in the absence of cogent and clinching proof goes straightway.

22. So far as concerning the deployment based on the budgetary allocation, the respondent has mainly placed reliance to the notifications dated 11.07.1995 and 4.7.2009, issued by the State Government. As per the notification dated 11.07.1995, it is envisaged that the employees who had been engaged on daily wage basis, skilled or unskilled who have completed 10 years or more continuous service with a minimum of 240 working days in a calendar year, as on 31.3.1995 would be regularized w.e.f. 01.04.1995, only upto the number of posts available in the respective department. Accordingly, as per notification dated 04.07.2009, the Government has decided that in future, no contingent paid employee be engaged otherwise it will be personal responsibility of concerned official/officer.

23. Verily, in the attendant facts and circumstances of the case, the petitioner has miserably failed to prove his case by leading cogent and satisfactory evidence on record, which could go to legitimately established on record that the petitioner had actually completed 240 working prior to his alleged termination. The plea raised from the side of the petitioner regarding the change in the service condition from muster roll to bill basis is again not established on record. All the contentions raised at bar are devoid of merit. The petitioner being master of his case must prove his case by leading cogent and clinching evidence. The petitioner cannot take the benefit or undue advantage out of the weakness of the respondent's case. The bare readings of the notifications, as aforesaid, the services of those workers have been regularized who have completed 8/10 years of continuous service with successful completion of 240 working days in every calendar year. Admittedly, the petitioner had failed to prove on record that he had completed 240 working in

a calendar year preceding his termination, hence, the case of the petitioner does not fairly and securely covered under the provisions of section 25-F of the Act. Similarly, the petitioner has failed to prove on record that he had been working continuously with the respondent from 2008 till December, 2013 and thereafter his services have been engaged on bill basis. In the absence of any cogent evidence on record, it cannot be said that the respondent department had violated the provisions of section 9-A of the Act.

24. So far as concerning the contention raised by the petitioner regarding unfair labour practice as envisaged under section 2-ra of the Act, illegal termination of the petitioner, which will fall under the definition of section 2-oo of the Act, as well as noncompliance of sections 25-B, 25-F, 25-G and 25-H of the Act, at the cost of repetition, it is the petitioner one who alleges must prove the said fact on record, but in the instant case the petitioner has failed to prove said factum on record by leading cogent and satisfactory evidence. The petitioner has not completed 240 working days in a calendar year. Even, if for the sake of arguments it is assumed that the petitioner had worked as seasonal workers on muster roll and bills basis, the law is very clear that he must have complete 240 working days in 12 calendar months preceding his termination but he has failed to establish this fact on record.

25. For the foregoing reasons and keeping inview my aforesaid discussion, this Tribunal concludes that the petitioner has failed to prove on record that his services have been illegally terminated by the respondent department. Therefore, he is not entitled to any relief. The issue in question is answered in negative.

Issue No. 2 :

26. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is not maintainable especially when the same has been presented before the Court pursuance to the reference notification received from the appropriate government. I find, nothing wrong with this petition, which is perfectly maintainable in the present form. The issue in question is answered in negative.

Issue No. 3 :

27. In support of this issue no evidence has been led by the respondent, which could go to show that there is no cause of action accrued in favour of the petitioner. Since, I have already held under issue no.1, that the petitioner had worked as seasonal worker with the respodnent, hence, there exists cause of action in his favour. The issue in question is answered in negative.

Issue No.4 :

28. At the time of arguments, Ld. Dy. DA for the respondent could not explain as to how this petition is barred by limitation. There lordships of Hon'ble Supreme Court in *(1999) 6 SCC 82, Ajayab Singh Vs. Sirhind Co-operative Marketing–cum-processing Service Society Limited and Another* have held as under:

> *"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone."*

Consequently, inview of law laid down by the Hon'ble Apex Court, I hold that this petition is not time barred to which my answer is in negative.

Relief :

29. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1 to 4, the merits of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the present reference is answered in negative by holding that the petitioner is not entitled to any relief. The petitioner is not entitled for any sort of relief from this Court/Tribunal.

30. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 51 of 2020

Instituted on : 11-03-2020

Decided on : 01-07-2023

Sushil Kumar s/o Shri Ram Dass, r/o Village Bania Devi, P.O. Jubla, Tehsil Arki, District Solan, H.P. . .*Petitioner.*

VERSUS

The Divisional Forest Officer (D.F.O), Kunihar Forest Division Kunihar, Distt. Solan (HP). . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C. Bhardwaj, Advocate

For respondent : Shri Prakash Thakur, Dy. DA.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 29.02.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as hereunder:

"Whether termination of the services of Sh. Sushil Kumar s/o Shri Ram Dass, r/o Village Bania Devi, P.O. Jubla, Tehsil Arki, District Solan, H.P. by the Divisional Forest Officer, Kunihar, Distt. Solan (H.P.) w.e.f. 02.05.2017 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as worker/labourer during the month of Jan., 2006 and was deployed to work at Bania Devi Forest Beat and Domehar beat and also worked in other forest beats under the command of respondent. The petitioner had worked continuously till his illegal termination on 02.05.2017 by the respondent. A demand notice was raised on 18.10.2017, as no muster roll was ever issued to him. The petitioner made several request or issuing the muster roll but he was told that he has to work on bill basis otherwise he will not be allowed to work anymore. It is submitted that the service conditions of the petitioner has been changed during the pendency of reference petition no. 51 of 2020 and thereby contravened the provisions of section 33 of the Act. The petitioner had worked for more than 14 years by rendering continuous service for the purpose of section 25-B of the Act and he had worked for more than 240 working days in each calendar year. During the conciliation proceedings, the respondent has produced the muster roll, which have found the name of the petitioner in some of the muster rolls. It is evident on the face of record there has not been shown/given any working days during the seasonal period, which starts oftenly from the month of May to October in every year. Moreover, the working of the petitioner has been recorded in other months, which seems that the officials of the respondent department knowingly and purposely hiding the record of the petitioner and as such indulged in an act of unfair labour practices. The action of the respondent is illegal, null and void. The service of the petitioner were terminated without issuing any notice and paying retrenchment compensation as envisaged under Section 25-F of the Act. The service of junior workmen namely Shri Hiru Ram, Shri Beli Ram and Shri Jagdish were retained by the respondent there is a clear violation of sections 25-B, 25-F, 25-G and 25-H of the Act. The respondent has never offered an opportunity of being heard and further did not pay the retrenchment compensation to the petitioner while dismissing him from service.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

"Now, it is therefore prayed that your Honour may kindly be pleased to award reinstatement to the petitioner / workman in the employment of the respondent department with retrospective effect i.e. from the date of his illegal removal/ termination on 02.05.2017 with full back wages, seniority and other consequential service benefits throughout with costs"

4. The lis was resisted and contested by filing written reply inter-alia preliminary objections of maintainability no cause of action and limitation have been raised.

5. On merits, it is denied that the petitioner was engaged during the month of Jan., 2006. However, as per record the petitioner worked as seasonal labourer during the years 2007 and 2008. The petitioner had left the seasonal work at his own sweet will. It is denied that the petitioner was engaged as daily wager. It is submitted that as per the instructions of the Government of Himachal Pradesh vide letter dated 04.07.2009 quotations/ limited tenders are being invited for sessional forestry work. It is denied that the petitioner came to know that the muster-rolls are not being issued for the work as the works in the department are being conducted as per instructions of the

Government. It is denied that the service conditions has been changed during the pendency of the reference petition. It is denied that the petitioner has worked for more than 240 working days in a calendar year. It is submitted that the petitioner had worked as seasonal labourer during the year 2007 for 62 days and 118 days during the year 2008 and thereafter the petitioner had left the job. The petitioner had not completed 240 days in any of the calendar year. The petitioner had also work with the department on bill basis w.e.f. 6/2016 till 3/2018. It is denied that the services of the petitioner has been terminated by the department. No juniors of the petitioner has been retained in service. The respondent prayed for the dismissal of the claim.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply by reaffirming and reiterating the contents those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 06.05.2022, as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 02.05.2017 without complying the provisions of the Industrial Disputes Act, is illegal and unjustified? If yes, to what relief the petitioner is entitled to? . .*OPP.*

2. Whether the petition is not maintainable in the present form? . .*OPR.*

3. Whether there is no cause of action accrued in favour of the petitioner as alleged? . .*OPR.*

4. Whether the petition is barred by limitation as alleged? . .*OPR.*

5. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	:	No. Not entitled to any relief.
Issue no. 2	:	No
Issue no. 3	:	No
Issue no.4	:	No
Relief.	:	Reference is answered in negative as per operative part of award.

REASONS FOR FINDINGS

Issue No.1 :

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically

reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence reply filed before the Conciliation Officer by the respondent (P-1), mandays chart (P-2) and working detail and payments made to the petitioner (P-3).

12. In the cross-examination, he denied that he had work as seasonal worker in the year 2007. Volunteered that he had worked on daily wage basis since 2006 continuously. He further denied that he had not completed 240 working days continuously during the year 2006. He further denied that he had not worked from 2008 to 2016. He also denied that he had worked on quotation basis during 2016 to 2018. He denied that his services were not illegally terminated. He also denied that no junior person to him was retained by the department.

13. To refute the allegations of the petitioner, the respondent had examined Shri Raj Krishan Kaushal, Range Officer of respondent as (RW-1), who has tendered into evidence his affidavit (RW-1/A), wherein he has reiterated almost all the averments as made thereto in the reply filed by the respondent. He also tendered in evidence authority letter (R-1), letter (R-2), notification (R-3). muster roll (R-4) and bills (R-5).

14. In cross-examination, he admitted to have filed the reply to the demand notice before the Conciliation Officer, Solan. He further admitted that the muster rolls were issued by the department, in which the petitioner was engaged as labourer on seasonal basis. He also admitted that the petitioner was not the worker of contractor. He admitted that notice was given to the petitioner from muster roll to quotation basis. He denied that the muster roll produced before the Conciliation Officer and before this Court are different. He further denied that the petitioner had worked continuously with the department and he was not shown to be engaged on muster roll intentionally. He admitted that the petitioner had abandoned the job himself. He also admitted that the petitioner had worked on bill basis as piece rate worker till 2018.

15. This is the entire oral and documentary evidence led from the side of both the parties.

16. Shri J.C Bhardwaj, AR for the petitioner has contended with all vehemence that the services of the petitioner have been terminated illegally without following any sort of procedure and provisions of the Act. He further contended that the respondent in their reply filed before the Conciliation Officer has duly admitted that the petitioner had worked as seasonal worker but he was engaged as daily wager. No appointment letter had been issued to the petitioner. The respondent department had alleged that the petitioner was engaged through contractor but nothing has been placed on record. However, the respondent in cross-examination has admitted that the petitioner was never engaged through contractor. Firstly, the petitioner was engaged on muster roll basis but later on he was engaged on bill basis. It is a change in service without serving any notice under section 9-A of the Act. The instruction issued vide notification dated 04.07.2009, are not applicable in the case of the petitioner as he was engaged by the department in the year 2006 *i.e.* much before 2009. Ld. AR argued that before engaging the services of the petitioner on bill basis, the respondent department was duty bound to fulfill the requirement of section 9-A of the Act, which is mandatory in nature and non-compliance thereto is totally illegal. He argued that one hand the respondent is claiming the petitioner to be seasonal worker and on the other hand no notice was issued to him. The petitioner has completed more than 240 working days in every calendar year and the respondent had retained the persons who are junior to the petitioner, hence, there is a violation of sections 25-F, 25-G and 25-H of the Act. It is, therefore, prayed that the claim filed by the petitioner may kindly be allowed and the respondent may kindly be directed to re-engage the petitioner with seniority and continuity along-with full back-wages.

17. Per contra, Shri Prakash Thakur, Ld. Dy. DA for the respondent department has strenuously argued that the services of the petitioner were never terminated by the respondent

rather he had left the job at his own. The petitioner was never engaged as daily wage labourer but he was engaged as seasonal worker to work in the forest nursery. The petitioner had worked with the respondent as seasonal worker in the years 2007 & 2008 and thereafter he had left the job at his own sweet will. The petitioner had not completed 240 working days in any calendar year, hence, he is not entitled for the protection of section 25-F of the Act. Ld. Dy. DA argued that the petitioner had again approached the respondent department for works after a lapse of more than four years, hence, as per the instruction of government, he was again engaged as seasonal worker on bill basis. No juniors to the petitioner have been retained or engaged by the respondent. He prayed for the dismissal of the claim petition.

18. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner and Ld. Dy. DA for the respondent department and have also scrutinized the entire case record with minute care, caution and circumspection.

19. Thus, from a careful examination of entire case record, it is manifestly clear on record that as per the case set up from the side of the petitioner is not at all relating to the termination but change in the condition of service of the petitioner, whereby the respondent has offered the work to the petitioner on bill basis from June, 2016. Ld. AR for the petitioner argued that the action of the respondent in changing the working conditions w.e.f. June, 2016, by offering work on bill basis which will tantamount to the cession of work and as such will fall within the definition of section 2-oo of the Act. On the other hand, Ld. Dy. DA for the respondent has contended that neither the petitioner was engaged on daily wages basis nor as a contingent paid employee. The petitioner was engaged on seasonal basis who had worked as sessional labourer during the years 2007 and 2008 and he had worked only for 62 and 118 days during 2007 and 2008 respectively and thereafter the petitioner had left the job.

20. Admittedly, the petitioner was engaged on seasonal basis and he had worked on muster roll in the year 2007 and worked for 62 days and in the year 2008, the petitioner had worked only for 118 days and thereafter the petitioner had left the job and thereafter the petitioner was engaged purely on bill basis w.e.f. June, 2016 and worked on quotation/limited tender basis till March, 2018. Though, the petitioner has alleged that he was engaged in the year 2006 and had worked continuously till March 2018. There is no spec of doubt about the fact that the petitioner had worked with the respondent department initially on muster roll basis w.e.f. the year 2007 and thereafter the petitioner had worked with the respondent purely on bill basis w.e.f. June, 2016 till March, 2018, which fact has been satisfactorily proved on record. The aforesaid facts makes it abundantly clear on record that the petitioner had left the job in the year 2008 and thereafter again started working with the respondent on bill basis. The petitioner had tried his level best to portray that he was in continuous service with the respondent department. It is also the contention of the petitioner that since there was change in the service condition as no notice before engaging the petitioner, on bill basis has been served upon him, as envisaged under section 9-A of the Act.

21. Both the contentions raised at bar from the side of the petitioner that he was engaged on daily wage basis and not as seasonal worker and he had completed 240 working days in every calendar year and secondly after June, 2016, the work in which the petitioner was deployed was based on budgetary allocation, made by the respondent. Though, the plea of seasonal work has been raised halfheartedly in the pleadings and in fact no evidence has been led in this behalf by the petitioner that he was engaged on daily wage basis and had worked continuously for 240 working days. The pleadings in the absence of cogent and clinching proof goes straightway.

22. So far as concerning the deployment based on the budgetary allocation, the respondent has mainly placed reliance to the notifications dated 11.07.1995 and 4.7.2009, issued by the State Government. As per the notification dated 11.07.1995, it is envisaged that the employees who had

been engaged on daily wage basis, skilled or unskilled who have completed 10 years or more continuous service with a minimum of 240 working days in a calendar year, as on 31.3.1995 would be regularized w.e.f. 01.04.1995, only upto the number of posts available in the respective department. Accordingly, as per notification dated 04.07.2009, the Government has decided that in future, no contingent paid employee be engaged otherwise it will be personal responsibility of concerned official/officer.

23. Verily, in the attendant facts and circumstances of the case, the petitioner has miserably failed to prove his case by leading cogent and satisfactory evidence on record, which could go to legitimately established on record that the petitioner had actually completed 240 working prior to his alleged termination. The plea raised from the side of the petitioner regarding the change in the service condition from muster roll to bill basis is again not established on record. All the contentions raised at bar are devoid of merit. The petitioner being master of his case must prove his case by leading cogent and clinching evidence. The petitioner cannot take the benefit or undue advantage out of the weakness of the respondent's case. The bare readings of the notifications, as aforesaid, the services of those workers have been regularized who have completed 8/10 years of continuous service with successful completion of 240 working days in every calendar year. Admittedly, the petitioner had failed to prove on record that he had completed 240 working in a calendar year preceding his termination, hence, the case of the petitioner does not fairly and securely covered under the provisions of section 25-F of the Act. Similarly, the petitioner has failed to prove on record that he had been working continuously with the respondent from 2008 till December, 2013 and thereafter his services have been engaged on bill basis. In the absence of any cogent evidence on record, it cannot be said that the respondent department had violated the provisions of section 9-A of the Act.

24. So far as concerning the contention raised by the petitioner regarding unfair labour practice as envisaged under section 2-ra of the Act, illegal termination of the petitioner, which will fall under the definition of section 2-oo of the Act, as well as noncompliance of sections 25-B, 25-F, 25-G and 25-H of the Act, at the cost of repetition, it is the petitioner one who alleges must prove the said fact on record, but in the instant case the petitioner has failed to prove said factum on record by leading cogent and satisfactory evidence. The petitioner has not completed 240 working days in a calendar year. Even, if for the sake of arguments it is assumed that the petitioner had worked as seasonal workers on muster roll and bills basis, the law is very clear that he must have complete 240 working days in 12 calendar months preceding his termination but he has failed to establish this fact on record.

25. For the foregoing reasons and keeping inview my aforesaid discussion, this Tribunal concludes that the petitioner has failed to prove on record that his services have been illegally terminated by the respondent department. Therefore, he is not entitled to any relief. The issue in question is answered in negative.

Issue No. 2 :

26. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is not maintainable especially when the same has been presented before the Court pursuance to the reference notification received from the appropriate government. I find, nothing wrong with this petition, which is perfectly maintainable in the present form. The issue in question is answered in negative.

Issue No. 3 :

27. In support of this issue no evidence has been led by the respondent, which could go to show that there is no cause of action accrued in favour of the petitioner. Since, I have already held

under issue no.1, that the petitioner had worked as seasonal worker with the respodnent, hence, there exists cause of action in his favour. The issue in question is answered in negative.

Issue No. 4 :

28. At the time of arguments, Ld. Dy. DA for the respondent could not explain as to how this petition is barred by limitation. There lordships of Hon'ble Supreme Court in *(1999) 6 SCC 82, Ajayab Singh Vs. Sirhind Co-operative Marketing–cum-processing Service Society Limited and Another* have held as under:

> *"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"*

Consequently, inview of law laid down by the Hon'ble Apex Court, I hold that this petition is not time barred to which my answer is in negative.

Relief:

29. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1 to 4, the merits of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the present reference is answered in negative by holding that the petitioner is not entitled to any relief. The petitioner is not entitled for any sort of relief from this Court/Tribunal.

30. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number	:	52 of 2020
Instituted on	:	06-03-2020
Decided on	:	01-07-2023

Ramesh Chand s/o Shri Jai Lal, r/o Village Bania Devi, P.O. Jubla, Tehsil Arki, District Solan, H.P. . .*Petitioner.*

VERSUS

The Divisional Forest Officer (D.F.O), Kunihar Forest Division Kunihar, Distt. Solan (HP).
. .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J. C. Bhardwaj, Advocate

For respondent : Shri Prakash Thakur, Dy. DA.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 29.02.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as hereunder:

"Whether termination of the services of Sh. Ramesh chand s/o Shri Jai Lal, r/o Village Bania Devi, P.O. Jubla, Tehsil Arki, District Solan, H.P. by the Divisional Forest Officer, Kunihar, Distt. Solan, (H.P.) w.e.f. 02.05.2017 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as worker/labourer during the month of November, 2002 and was deployed to work at Bania Devi Forest Beat and Domehar beat and also worked in other forest beats under the command of respondent. The petitioner had worked continuously till his illegal termination on 02.05.2017 by the respondent. A demand notice was raised on 18.10.2017, as no muster roll was ever issued to him. The petitioner made several request or issuing the muster roll but he was told that he has to work on bill basis otherwise he will not be allowed to work anymore. It is submitted that the service conditions of the petitioner has been changed during the pendency of reference petition no. 52 of 2020 and thereby contravened the provisions of section 33 of the Act. The petitioner had worked for more than 18 years by rendering continuous service for the purpose of section 25-B of the Act and he had worked for more than 240 working days in each calendar year. During the conciliation proceedings, the respondent has produced the muster roll, which have found the name of the petitioner in some of the muster rolls. It is evident on the face of record there has not been shown/given any working days during the seasonal period, which starts oftenly from the month of May to October in every year. Moreover, the working of the petitioner has been recorded in other months, which seems that the officials of the respondent department knowingly and purposely hiding the record of the petitioner and as such indulged in an act of unfair labour practices. The action of the respondent is illegal, null and void. The service of the petitioner were terminated without issuing any notice and paying retrenchment compensation as envisaged under Section 25-F of the Act. The service of junior workmen namely Shri Hiru Ram, Shri Beli Ram and Shri Jagdish were retained by the respondent there is a clear violation of sections 25-B, 25-F, 25-G and 25-H of the Act. The respondent has never offered an opportunity of being heard and further did not pay the retrenchment compensation to the petitioner while dismissing him from service.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

"Now, it is therefore prayed that your Honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent department with retrospective effect i.e. from the date of his illegal removal/ termination on 02.05.2017 with full back wages, seniority and other consequential service benefits throughout with costs"

4. The lis was resisted and contested by filing written reply inter-alia preliminary objections of maintainability no cause of action and limitation have been raised.

5. On merits, it is denied that the petitioner was engaged during the month of July, 2002. However, as per record the petitioner worked as seasonal labourer during the year 2003. The petitioner had left the seasonal work at his own sweet will. It is denied that the petitioner was engaged as daily wager. It is submitted that as per the instructions of the Government of Himachal Pradesh vide letter dated 04.07.2009 quotations/ limited tenders are being invited for sessional forestry work. It is denied that the petitioner came to know that the muster-rolls are not being issued for the work as the works in the department are being conducted as per instructions of the Government. It is denied that the service conditions has been changed during the pendency of the reference petition. It is denied that the petitioner has worked for more than 240 working days in a calendar year. It is submitted that the petitioner had worked as seasonal labourer during the year 2003 for 135½ days, 109 days during 2004, 164 days during 2005, 203 days during 2006, 177 days during 2007, 97 days during 2008 and 57 days during 2009 and thereafter the petitioner had left the job. The petitioner had not completed 240 days in any of the calendar year. The petitioner had also work with the department on bill basis w.e.f. 3/2013 till 6/2017. It is denied that the services of the petitioner has been terminated by the department. No juniors of the petitioner has been retained in service. The respondent prayed for the dismissal of the claim.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply by reaffirming and reiterating the contents those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 06.05.2022, as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 02.05.2017 without complying the provisions of the Industrial Disputes Act, is illegal and unjustified? If yes, to what relief the petitioner is entitled to? . .*OPP.*

2. Whether the petition is not maintainable in the present form? . .*OPR* .

3. Whether there is no cause of action accrued in favour of the petitioner as alleged? . .*OPR.*

4. Whether the petition is barred by limitation as alleged? . .*OPR.*

5. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	:	No. Not entitled to any relief
Issue no.2	:	No
Issue no. 3	:	No
Issue no.4	:	No
Relief	:	Reference is answered in negative as per operative part of award.

REASONS FOR FINDINGS

Issue No.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence reply filed before the Conciliation Officer by the respondent (P-1), mandays chart (P-2) and working detail and payments made to the petitioner (P-3).

12. In the cross-examination, he denied that he had work as seasonal worker in the year 2003 and 2009. Volunteered that he had worked on daily wage basis since 2004 continuously. He further denied that he had not completed 240 working days continuously during the period 2003 to 2009. He further denied that he had not worked from 2009 to 2012. He also denied that he had worked on quotation basis during 2013 to 2017. He denied that his services were not illegally terminated. He also denied that no junior person to him was retained by the department.

13. To refute the allegations of the petitioner, the respondent had examined Shri Raj Krishan Kaushal, Range Officer of respondent as (RW-1), who has tendered into evidence his affidavit (RW-1/A), wherein he has reiterated almost all the averments as made there to in the reply filed by the respondent. He also tendered in evidence authority letter (R-1), letter (R-2), notification (R-3). Mandays chart (R-4), muster roll (R-5) and bills (R-6).

14. In cross-examination, he admitted to have filed the reply to the demand notice before the Conciliation Officer, Solan. He further admitted that the muster rolls were issued by the department, in which the petitioner was engaged as labourer on seasonal basis. He also admitted that the petitioner was not the worker of contractor. He admitted that notice was given to the petitioner from muster roll to quotation basis. He denied that the muster roll produced before the Conciliation Officer and before this Court are different. He further denied that the petitioner had worked continuously with the department and he was not shown to be engaged on muster roll intentionally. He admitted that the petitioner had abandoned the job himself. He also admitted that the petitioner had worked on bill basis as piece rate worker till 2017.

15. This is the entire oral and documentary evidence led from the side of both the parties.

16. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the services of the petitioner have been terminated illegally without following any sort of procedure and provisions of the Act. He further contended that the respondent in their reply filed before the Conciliation Officer has duly admitted that the petitioner had worked as seasonal worker but he was engaged as daily wager. No appointment letter had been issued to the petitioner. The

respondent department had alleged that the petitioner was engaged through contractor but nothing has been placed on record. However, the respondent in cross-examination has admitted that the petitioner was never engaged through contractor. Firstly, the petitioner was engaged on muster roll basis but later on he was engaged on bill basis. It is a change in service without serving any notice under section 9-A of the Act. The instruction issued vide notification dated 04.07.2009, are not applicable in the case of the petitioner as he was engaged by the department in the year 2002 i.e. much before 2009. Ld. AR argued that before engaging the services of the petitioner on bill basis, the respondent department was duty bound to fulfill the requirement of section 9-A of the Act, which is mandatory in nature and non-compliance thereto is totally illegal. He argued that one hand the respondent is claiming the petitioner to be seasonal worker and on the other hand no notice was issued to him. The petitioner has completed more than 240 working days in every calendar year and the respondent had retained the persons who are junior to the petitioner, hence, there is a violation of sections 25-F, 25-G and 25-H of the Act. It is, therefore, prayed that the claim filed by the petitioner may kindly be allowed and the respondent may kindly be directed to re-engage the petitioner with seniority and continuity along-with full back-wages.

17. Per contra, Shri Prakash Thakur, Ld. Dy. DA for the respondent department has strenuously argued that the services of the petitioner were never terminated by the respondent rather he had left the job at his own. The petitioner was never engaged as daily wage labourer but he was engaged as seasonal worker to work in the forest nursery. The petitioner had worked with the respondent as seasonal worker till the year 2009 and thereafter he had left the job at his own sweet will. The petitioner had not completed 240 working days in any calendar year, hence, he is not entitled for the protection of section 25-F of the Act. Ld. Dy. DA argued that the petitioner had again approached the respondent department for works after a lapse of more than four years, hence, as per the instruction of government, he was again engaged as seasonal worker on bill basis. No juniors to the petitioner have been retained or engaged by the respondent. He prayed for the dismissal of the claim petition.

18. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner and Ld. Dy. DA for the respondent department and have also scrutinized the entire case record with minute care, caution and circumspection.

19. Thus, from a careful examination of entire case record, it is manifestly clear on record that as per the case set up from the side of the petitioner is not at all relating to the termination but change in the condition of service of the petitioner, whereby the respondent has offered the work to the petitioner on bill basis from March, 2013. Ld. AR for the petitioner argued that the action of the respondent in changing the working conditions w.e.f. March, 2013, by offering work on bill basis which will tantamount to the cession of work and as such will fall within the definition of section 2-oo of the Act. On the other hand, Ld. Dy. DA for the respondent has contended that neither the petitioner was engaged on daily wages basis nor as a contingent paid employee. The petitioner was engaged on seasonal basis who had worked as sessional labourer during the year 2003 for 135 ½ days, 109 days during 2004, 164 days during 2005, 203 days during 2006, 177 days during 2007, 97 days during 2008 and 57 days during 2009 and thereafter the petitioner had left the job.

20. Admittedly, the petitioner was engaged on seasonal basis and he had worked on muster roll in the year 2003 and had worked for 135½ days in 2003, 109 days during 2004, 164 days during 2005, 203 days during 2006, 177 days during 2007, 97 days during 2008 and 57 days during 2009 and thereafter the petitioner was engaged purely on bill basis w.e.f. March 2013 and worked on quotation/limited tender basis till June 2017. Though, the petitioner has alleged that he was engaged in the year 2003 and had worked continuously till June 2017. There is no spec of doubt about the fact that the petitioner had worked with the respondent department initially on muster roll basis w.e.f. the year 2003 till 2009 and thereafter the petitioner had worked with the respondent

purely on bill basis w.e.f. March 2013 till June 2017, which fact has been satisfactorily proved on record. The aforesaid facts makes it abundantly clear on record that the petitioner had left the job in the year 2009 and thereafter again started working with the respondent on bill basis. The petitioner had tried his level best to portray that he was in continuous service with the respondent department. It is also the contention of the petitioner that since there was change in the service condition as no notice before engaging the petitioner, on bill basis has been served upon him, as envisaged under section 9-A of the Act.

21. Both the contentions raised at bar from the side of the petitioner that he was engaged on daily wage basis and not as seasonal worker and he had completed 240 working days in every calendar year and secondly after March 2023, the work in which the petitioner was deployed was based on budgetary allocation, made by the respondent. Though, the plea of seasonal work has been raised halfheartedly in the pleadings and in fact no evidence has been led in this behalf by the petitioner that he was engaged on daily wage basis and had worked continuously for 240 working days. The pleadings in the absence of cogent and clinching proof goes straightway.

22. So far as concerning the deployment based on the budgetary allocation, the respondent has mainly placed reliance to the notifications dated 11.07.1995 and 4.7.2009, issued by the State Government. As per the notification dated 11.07.1995, it is envisaged that the employees who had been engaged on daily wage basis, skilled or unskilled who have completed 10 years or more continuous service with a minimum of 240 working days in a calendar year, as on 31.3.1995 would be regularized w.e.f. 01.04.1995, only upto the number of posts available in the respective department. Accordingly, as per notification dated 04.07.2009, the Government has decided that in future, no contingent paid employee be engaged otherwise it will be personal responsibility of concerned official/officer.

23. Verily, in the attendant facts and circumstances of the case, the petitioner has miserably failed to prove his case by leading cogent and satisfactory evidence on record, which could go to legitimately established on record that the petitioner had actually completed 240 working prior to his alleged termination. The plea raised from the side of the petitioner regarding the change in the service condition from muster roll to bill basis is again not established on record. All the contentions raised at bar are devoid of merit. The petitioner being master of his case must prove his case by leading cogent and clinching evidence. The petitioner cannot take the benefit or undue advantage out of the weakness of the respondent's case. The bare readings of the notifications, as aforesaid, the services of those workers have been regularized who have completed 8/10 years of continuous service with successful completion of 240 working days in every calendar year. Admittedly, the petitioner had failed to prove on record that he had completed 240 working in a calendar year preceding his termination, hence, the case of the petitioner does not fairly and securely covered under the provisions of section 25-F of the Act. Similarly, the petitioner has failed to prove on record that he had been working continuously with the respondent from 2009 till March 2013 and thereafter his services have been engaged on bill basis. In the absence of any cogent evidence on record, it cannot be said that the respondent department had violated the provisions of section 9-A of the Act.

24. So far as concerning the contention raised by the petitioner regarding unfair labour practice as envisaged under section 2-ra of the Act, illegal termination of the petitioner, which will fall under the definition of section 2-oo of the Act, as well as noncompliance of sections 25-B, 25-F, 25-G and 25-H of the Act, at the cost of repetition, it is the petitioner one who alleges must prove the said fact on record, but in the instant case the petitioner has failed to prove said factum on record by leading cogent and satisfactory evidence. The petitioner has not completed 240 working days in a calendar year. Even, if for the sake of arguments it is assumed that the petitioner had worked as seasonal workers on muster roll and bills basis, the law is very clear that he must have

complete 240 working days in 12 calendar months preceding his termination but he has failed to establish this fact on record.

25. For the foregoing reasons and keeping inview my aforesaid discussion, this Tribunal concludes that the petitioner has failed to prove on record that his services have been illegally terminated by the respondent department. Therefore, he is not entitled to any relief. The issue in question is answered in negative.

Issue No. 2 :

26. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is not maintainable especially when the same has been presented before the Court pursuance to the reference notification received from the appropriate government. I find, nothing wrong with this petition, which is perfectly maintainable in the present form. The issue in question is answered in negative.

Issue No. 3 :

27. In support of this issue no evidence has been led by the respondent, which could go to show that there is no cause of action accrued in favour of the petitioner. Since, I have already held under issue no.1, that the petitioner had worked as seasonal worker with the respodnent, hence, there exists cause of action in his favour. The issue in question is answered in negative.

Issue No. 4 :

28. At the time of arguments, Ld. Dy. DA for the respondent could not explain as to how this petition is barred by limitation. There lordships of Hon'ble Supreme Court in *(1999) 6 SCC 82, Ajayab singh Vs. Sirhind Co-operative Marketing–cum-processing Service Society Limited and Another* have held as under:

> *"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone."*

Consequently, inview of law laid down by the Hon'ble Apex Court, I hold that this petition is not time barred to which my answer is in negative.

Relief

29. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1 to 4, the merits of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the present reference is answered in negative by holding that the petitioner is not entitled to any relief. The petitioner is not entitled for any sort of relief from this Court/Tribunal.

30. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 53 of 2020

Instituted on : 09-03-2020

Decided on : 01-07-2023

Amar Singh s/o Shri Jagar Nath, r/o Village Lahuli, P.O. Jubla, Tehsil Arki, District Solan, H.P. . .*Petitioner.*

VERSUS

The Divisional Forest Officer, (D.F.O), Kunihar Forest Division Kunihar, Distt. Solan (HP). . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C. Bhardwaj, Advocate.

For respondent : Shri Prakash Thakur, Dy. DA.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 04.03.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as hereunder:

> **"Whether termination of the services of Sh. Amar Singh s/o Shri Jagar Nath, r/o Village Lahuli, P.O. Jubla, Tehsil Arki, District Solan, H.P. by the Divisional Forest Officer, Kunihar, Distt. Solan (H.P.) w.e.f. 02.05.2017 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employer?"**

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as worker/labourer during the month of April, 2004 and was deployed to work at Bania Devi Forest Beat and Domehar beat and also worked in other forest beats under the command of respondent. The petitioner had worked continuously till his illegal termination on 02.05.2017 by the respondent. A demand notice was raised on 18.10.2017, as no muster roll was ever issued to him. The petitioner made several

request or issuing the muster roll but he was told that he has to work on bill basis otherwise he will not be allowed to work anymore. It is submitted that the service conditions of the petitioner has been changed during the pendency of reference petition no. 53 of 2020 and thereby contravened the provisions of section 33 of the Act. The petitioner had worked for more than 14 years by rendering continuous service for the purpose of section 25-B of the Act and he had worked for more than 240 working days in each calendar year. During the conciliation proceedings, the respondent has produced the muster roll, which have found the name of the petitioner in some of the muster rolls. It is evident on the face of record there has not been shown/given any working days during the seasonal period, which starts oftenly from the month of May to October in every year. Moreover, the working of the petitioner has been recorded in other months, which seems that the officials of the respondent department knowingly and purposely hiding the record of the petitioner and as such indulged in an act of unfair labour practices. The action of the respondent is illegal, null and void. The service of the petitioner were terminated without issuing any notice and paying retrenchment compensation as envisaged under Section 25-F of the Act. The service of junior workmen namely Shri Hiru Ram, Shri Beli Ram and Shri Jagdish were retained by the respondent there is a clear violation of sections 25-B, 25-F, 25-G and 25-H of the Act. The respondent has never offered an opportunity of being heard and further did not pay the retrenchment compensation to the petitioner while dismissing him from service.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

> **"Now, it is therefore prayed that your Honour may kindly be pleased to award reinstatement to the petitioner / workman in the employment of the respondent department with retrospective effect i.e. from the date of his illegal removal/ termination on 02.05.2017 with full back wages, seniority and other consequential service benefits throughout with costs"**

4. The lis was resisted and contested by filing written reply inter-alia preliminary objections of maintainability no cause of action and limitation have been raised.

5. On merits, it is denied that the petitioner was engaged during the month of April, 2004. However, as per record the petitioner worked as seasonal labourer during the years 2004 and 2009. The petitioner had left the seasonal work at his own sweet will. It is denied that the petitioner was engaged as daily wager. It is submitted that as per the instructions of the Government of Himachal Pradesh vide letter dated 04.07.2009 quotations/ limited tenders are being invited for sessional forestry work. It is denied that the petitioner came to know that the muster-rolls are not being issued for the work as the works in the department are being conducted as per instructions of the Government. It is denied that the service conditions has been changed during the pendency of the reference petition. It is denied that the petitioner has worked for more than 240 working days in a calendar year. It is submitted that the petitioner had worked as seasonal labourer during the year 2004 for 40 days, 167 days in 2005, 173 days in 2006, 160 days in 2007, 118 days in 2008 and 57 days during the year 2009 and thereafter the petitioner had left the job. The petitioner had not completed 240 days in any of the calendar year. The petitioner had also work with the department on bill basis w.e.f. 1/2015 till 3/2017. It is denied that the services of the petitioner has been terminated by the department. No juniors of the petitioner has been retained in service. The respondent prayed for the dismissal of the claim.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply by reaffirming and reiterating the contents those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 06.05.2022, as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 02.05.2017 without complying the provisions of the Industrial Disputes Act, is illegal and unjustified? If yes, to what relief the petitioner is entitled to? . .*OPP.*

2. Whether the petition is not maintainable in the present form? . .*OPR.*

3. Whether there is no cause of action accrued in favour of the petitioner as alleged? . .*OPR.*

4. Whether the petition is barred by limitation as alleged? . .*OPR.*

5. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	:	No. Not entitled to any relief
Issue no.2	:	No
Issue no. 3	:	No
Issue no.4	:	No
Relief	:	Reference is answered in negative as per operative part of award.

REASONS FOR FINDINGS

Issue No.1:

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence reply filed before the Conciliation Officer by the respondent (P-1), mandays chart (P-2) and working detail and payments made to the petitioner (P-3).

12. In the cross-examination, he denied that he had worked as seasonal worker since 2004 to 2009. Volunteered that he had worked on daily wage basis since 2004 continuously. He further denied that he had not completed 240 working days continuously during the years 2004 to 2009. He further denied that he had not worked from 2009 to 2015. He also denied that he had worked on quotation basis during 2015 to 2018. He denied that his services were not illegally terminated. He also denied that no junior person to him was retained by the department.

13. To refute the allegations of the petitioner, the respondent had examined Shri Raj Krishan Kaushal, Range Officer of respondent as (RW-1), who has tendered into evidence his

affidavit (RW-1/A), wherein he has reiterated almost all the averments as made there to in the reply filed by the respondent. He also tendered in evidence authority letter (R-1), letter (R-2), notification (R-3), mandays chart (R-4), muster roll (R-5) and bills (R-6).

14. In cross-examination, he admitted to have filed the reply to the demand notice before the Conciliation Officer, Solan. He further admitted that the muster rolls were issued by the department, in which the petitioner was engaged as labourer on seasonal basis. He also admitted that the petitioner was not the worker of contractor. He admitted that notice was given to the petitioner from muster roll to quotation basis. He denied that the muster roll produced before the Conciliation Officer and before this Court are different. He further denied that the petitioner had worked continuously with the department and he was not shown to be engaged on muster roll intentionally. He admitted that the petitioner had abandoned the job himself. He also admitted that the petitioner had worked on bill basis as piece rate worker till 2017.

15. This is the entire oral and documentary evidence led from the side of both the parties.

16. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the services of the petitioner have been terminated illegally without following any sort of procedure and provisions of the Act. He further contended that the respondent in their reply filed before the Conciliation Officer has duly admitted that the petitioner had worked as seasonal worker but he was engaged as daily wager. No appointment letter had been issued to the petitioner. The respondent department had alleged that the petitioner was engaged through contractor but nothing has been placed on record. However, the respondent in cross-examination has admitted that the petitioner was never engaged through contractor. Firstly, the petitioner was engaged on muster roll basis but later on he was engaged on bill basis. It is a change in service without serving any notice under section 9-A of the Act. The instruction issued vide notification dated 04.07.2009, are not applicable in the case of the petitioner as he was engaged by the department in the year 2004 i.e. much before 2009. Ld. AR argued that before engaging the services of the petitioner on bill basis, the respondent department was duty bound to fulfill the requirement of section 9-A of the Act, which is mandatory in nature and non-compliance thereto is totally illegal. He argued that one hand the respondent is claiming the petitioner to be seasonal worker and on the other hand no notice was issued to him. The petitioner has completed more than 240 working days in every calendar year and the respondent had retained the persons who are junior to the petitioner, hence, there is a violation of sections 25-F, 25-G and 25-H of the Act. It is, therefore, prayed that the claim filed by the petitioner may kindly be allowed and the respondent may kindly be directed to re-engage the petitioner with seniority and continuity along-with full back-wages.

17. Per contra, Shri Prakash Thakur, Ld. Dy. DA for the respondent department has strenuously argued that the services of the petitioner were never terminated by the respondent rather he had left the job at his own. The petitioner was never engaged as daily wage labourer but he was engaged as seasonal worker to work in the forest nursery. The petitioner had worked with the respondent as seasonal worker during the years 2004 till 2009 and thereafter he had left the job at his own sweet will. The petitioner had not completed 240 working days in any calendar year, hence, he is not entitled for the protection of section 25-F of the Act. Ld. Dy. DA argued that the petitioner had again approached the respondent department for works after a lapse of more than four years, hence, as per the instruction of government, he was again engaged as seasonal worker on bill basis. No juniors to the petitioner have been retained or engaged by the respondent. He prayed for the dismissal of the claim petition.

18. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner and Ld. Dy. DA for the respondent department and have also scrutinized the entire case record with minute care, caution and circumspection.

19. Thus, from a careful examination of entire case record, it is manifestly clear on record that as per the case set up from the side of the petitioner is not at all relating to the termination but change in the condition of service of the petitioner, whereby the respondent has offered the work to the petitioner on bill basis from Jan., 2015. Ld. AR for the petitioner argued that the action of the respondent in changing the working conditions w.e.f. Jan., 2015, by offering work on bill basis which will tantamount to the cession of work and as such will fall within the definition of section 2-oo of the Act. On the other hand, Ld. Dy. DA for the respondent has contended that neither the petitioner was engaged on daily wages basis nor as a contingent paid employee. The petitioner was engaged on seasonal basis who had worked as sessional labourer during the year 2004 for 40 days, 167 days in 2005, 173 days in 2006, 160 days in 2007, 118 days in 2008 and 57 days during the year 2009 and thereafter the petitioner had left the job.

20. Admittedly, the petitioner was engaged on seasonal basis and he had worked on muster roll in the year 2004 and worked for 40 days in the year 2004, 167 days in 2005, 173 days in 2006, 160 days in 2007, 118 days in 2008 and 57 days during the year 2009 and thereafter the petitioner had left the job and thereafter the petitioner was engaged purely on bill basis w.e.f. Jan., 2015 and worked on quotation/limited tender basis till March, 2017. Though, the petitioner has alleged that he was engaged in the year 2004 and had worked continuously till March 2017. There is no spec of doubt about the fact that the petitioner had worked with the respondent department initially on muster roll basis w.e.f. the year 2004 and thereafter the petitioner had worked with the respondent purely on bill basis w.e.f. Jan., 2015 till March, 2017, which fact has been satisfactorily proved on record. The aforesaid facts makes it abundantly clear on record that the petitioner had left the job in the year 2009 and thereafter again started working with the respondent on bill basis. The petitioner had tried his level best to portray that he was in continuous service with the respondent department. It is also the contention of the petitioner that since there was change in the service condition as no notice before engaging the petitioner, on bill basis has been served upon him, as envisaged under section 9-A of the Act.

21. Both the contentions raised at bar from the side of the petitioner that he was engaged on daily wage basis and not as seasonal worker and he had completed 240 working days in every calendar year and secondly after Jan., 2015, the work in which the petitioner was deployed was based on budgetary allocation, made by the respondent. Though, the plea of seasonal work has been raised halfheartedly in the pleadings and in fact no evidence has been led in this behalf by the petitioner that he was engaged on daily wage basis and had worked continuously for 240 working days. The pleadings in the absence of cogent and clinching proof goes straightway.

22. So far as concerning the deployment based on the budgetary allocation, the respondent has mainly placed reliance to the notifications dated 11.07.1995 and 4.7.2009, issued by the State Government. As per the notification dated 11.07.1995, it is envisaged that the employees who had been engaged on daily wage basis, skilled or unskilled who have completed 10 years or more continuous service with a minimum of 240 working days in a calendar year, as on 31.3.1995 would be regularized w.e.f. 01.04.1995, only upto the number of posts available in the respective department. Accordingly, as per notification dated 04.07.2009, the Government has decided that in future, no contingent paid employee be engaged otherwise it will be personal responsibility of concerned official/officer.

23. Verily, in the attendant facts and circumstances of the case, the petitioner has miserably failed to prove his case by leading cogent and satisfactory evidence on record, which could go to legitimately established on record that the petitioner had actually completed 240 working prior to his alleged termination. The plea raised from the side of the petitioner regarding the change in the service condition from muster roll to bill basis is again not established on record. All the contentions raised at bar are devoid of merit. The petitioner being master of his case must

prove his case by leading cogent and clinching evidence. The petitioner cannot take the benefit or undue advantage out of the weakness of the respondent's case. The bare readings of the notifications, as aforesaid, the services of those workers have been regularized who have completed 8/10 years of continuous service with successful completion of 240 working days in every calendar year. Admittedly, the petitioner had failed to prove on record that he had completed 240 working in a calendar year preceding his termination, hence, the case of the petitioner does not fairly and securely covered under the provisions of section 25-F of the Act. Similarly, the petitioner has failed to prove on record that he had been working continuously with the respondent from 2008 till December, 2013 and thereafter his services have been engaged on bill basis. In the absence of any cogent evidence on record, it cannot be said that the respondent department had violated the provisions of section 9-A of the Act.

24. So far as concerning the contention raised by the petitioner regarding unfair labour practice as envisaged under section 2-ra of the Act, illegal termination of the petitioner, which will fall under the definition of section 2-oo of the Act, as well as noncompliance of sections 25-B, 25-F, 25-G and 25-H of the Act, at the cost of repetition, it is the petitioner one who alleges must prove the said fact on record, but in the instant case the petitioner has failed to prove said factum on record by leading cogent and satisfactory evidence. The petitioner has not completed 240 working days in a calendar year. Even, if for the sake of arguments it is assumed that the petitioner had worked as seasonal workers on muster roll and bills basis, the law is very clear that he must have complete 240 working days in 12 calendar months preceding his termination but he has failed to establish this fact on record.

25. For the foregoing reasons and keeping inview my aforesaid discussion, this Tribunal concludes that the petitioner has failed to prove on record that his services have been illegally terminated by the respondent department. Therefore, he is not entitled to any relief. The issue in question is answered in negative.

Issue No. 2 :

26. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is not maintainable especially when the same has been presented before the Court pursuance to the reference notification received from the appropriate government. I find, nothing wrong with this petition, which is perfectly maintainable in the present form. The issue in question is answered in negative.

Issue No. 3 :

27. In support of this issue no evidence has been led by the respondent, which could go to show that there is no cause of action accured in favour of the petitioner. Since, I have already held under issue no.1, that the petitioner had worked as seasonal worker with the respodnent, hence, there exists cause of action in his favour. The issue in question is answered in negative.

Issue No.4 :

28. At the time of arguments, Ld. Dy. DA for the respondent could not explain as to how this petition is barred by limitation. There lordships of Hon'ble Supreme Court in *(1999) 6 SCC 82, Ajayab Singh Vs. Sirhind Co-operative Marketing–cum-processing Service Society Limited and Another* have held as under:

> *"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of*

delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

Consequently, inview of law laid down by the Hon'ble Apex Court, I hold that this petition is not time barred to which my answer is in negative.

Relief:

29. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1 to 4, the merits of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the present reference is answered in negative by holding that the petitioner is not entitled to any relief. The petitioner is not entitled for any sort of relief from this Court/Tribunal.

30. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 55 of 2020

Instituted on : 11-03-2020

Decided on : 01-07-2023

Narpat Ram s/o Shri Puran Chand, r/o Village Baruban Badi, P.O. Jubla, Tehsil Arki, District Solan, H.P. . .*Petitioner.*

VERSUS

The Divisional Forest Officer (D.F.O), Kunihar Forest Division Kunihar, Distt. Solan (H.P.) . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C. Bhardwaj, Advocate

For respondent : Shri Prakash Thakur, Dy. DA

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 29.02.2020, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, which reads as hereunder:

> **"Whether termination of the services of Sh. Narpat Ram s/o Shri Puran Chand, r/o Village Baruban Badi, P.O. Jubla, Tehsil Arki, District Solan, H.P. by the Divisional Forest Officer, Kunihar, Distt. Solan, (H.P.) w.e.f. 02.05.2017 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employer?"**

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as worker/labourer during the month of June, 2006 and was deployed to work at Bania Devi Forest Beat and Domehar beat and also worked in other forest beats under the command of respondent. The petitioner had worked continuously till his illegal termination on 02.05.2017 by the respondent. A demand notice was raised on 18.10.2017, as no muster roll was ever issued to him. The petitioner made several request for issuing the muster roll but he was told that he has to work on bill basis otherwise he will not be allowed to work anymore. It is submitted that the service conditions of the petitioner has been changed during the pendency of reference petition no. 55 of 2020 and thereby contravened the provisions of section 33 of the Act. The petitioner had worked for more than 14 years by rendering continuous service for the purpose of section 25-B of the Act and he had worked for more than 240 working days in each calendar year. During the conciliation proceedings, the respondent has produced the muster roll, which have found the name of the petitioner in some of the muster rolls. It is evident on the face of record there has not been shown/given any working days during the seasonal period, which starts oftenly from the month of May to October in every year. Moreover, the working of the petitioner has been recorded in other months, which seems that the officials of the respondent department knowingly and purposely hiding the record of the petitioner and as such indulged in an act of unfair labour practices. The action of the respondent is illegal, null and void. The service of the petitioner were terminated without issuing any notice and paying retrenchment compensation as envisaged under section 25-F of the Act. The service of junior workmen namely Shri Hiru Ram, Shri Beli Ram and Shri Jagdish were retained by the respondent there is a clear violation of sections 25-B, 25-F, 25-G and 25-H of the Act. The respondent has never offered an opportunity of being heard and further did not pay the retrenchment compensation to the petitioner while dismissing him from service.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

> **"Now, it is therefore prayed that your Honour may kindly be pleased to award reinstatement to the petitioner / workman in the employment of the respondent department with retrospective effect i.e. from the date of his illegal removal/ termination on 02.05.2017 with full back wages, seniority and other consequential service benefits throughout with costs"**

4. The lis was resisted and contested by filing written reply inter-alia preliminary objections of maintainability no cause of action and limitation have been raised.

5. On merits, it is denied that the petitioner was engaged during the month of June, 2006. However, as per record the petitioner worked as seasonal labourer during the year 2008. The

petitioner had left the seasonal work at his own sweet will. It is denied that the petitioner was engaged as daily wager. It is submitted that as per the instructions of the Government of Himachal Pradesh vide letter dated 04.07.2009 quotations/ limited tenders are being invited for sessional forestry work. It is denied that the petitioner came to know that the muster-rolls are not being issued for the work as the works in the department are being conducted as per instructions of the Government. It is denied that the service conditions has been changed during the pendency of the reference petition. It is denied that the petitioner has worked for more than 240 working days in a calendar year. It is submitted that the petitioner had worked as seasonal labourer during the year 2008 only for 29 days and thereafter the petitioner had left the job. The petitioner had not completed 240 days in any of the calendar year. The petitioner had also work with the department on bill basis w.e.f. 3/2013 till 3/2018. It is denied that the services of the petitioner has been terminated by the department. No juniors of the petitioner has been retained in service. The respondent prayed for the dismissal of the claim.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply by reaffirming and reiterating the contents those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 06.05.2022, as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 02.05.2017 without complying the provisions of the Industrial Disputes Act, is illegal and unjustified? If yes, to what relief the petitioner is entitled to? . .*OPP.*

2. Whether the petition is not maintainable in the present form? . .*OPR* .

3. Whether there is no cause of action accrued in favour of the petitioner as alleged? . .*OPR.*

4. Whether the petition is barred by limitation as alleged? . .*OPR.*

5. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	:	No, Not entitled to any relief
Issue no. 2	:	No
Issue no. 3	:	No
Issue no. 4	:	No
Relief	:	Reference is answered in negative as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence reply filed before the Conciliation Officer by the respondent (P-1), mandays chart (P-2) and working detail and payments made to the petitioner (P-3).

12. In the cross-examination, he denied that he had work as seasonal worker in the year 2008. Volunteered that he had worked on daily wage basis since 2006 continuously. He further denied that he had not completed 240 working days continuously during the year 2008. He further denied that he had not worked from 2008 to 2013. He also denied that he had worked on quotation basis during 2013 to 2018. He denied that his services were not illegally terminated. He also denied that no junior person to him was retained by the department.

13. To refute the allegations of the petitioner, the respondent had examined Shri Raj Krishan Kaushal, Range Officer of respondent as (RW-1), who has tendered into evidence his affidavit (RW-1/A), wherein he has reiterated almost all the averments as made there to in the reply filed by the respondent. He also tendered in evidence authority letter (R-1), letter (R-2), notification (R-3). muster roll (R-4) and bills (R-5).

14. In cross-examination, he admitted to have filed the reply to the demand notice before the Conciliation Officer, Solan. He further admitted that the muster rolls were issued by the department, in which the petitioner was engaged as labourer on seasonal basis. He also admitted that the petitioner was not the worker of contractor. He admitted that notice was given to the petitioner from muster roll to quotation basis. He denied that the muster roll produced before the Conciliation Officer and before this Court are different. He further denied that the petitioner had worked continuously with the department and he was not shown to be engaged on muster roll intentionally. He admitted that the petitioner had abandoned the job himself. He also admitted that the petitioner had worked on bill basis as piece rate worker till 2018.

15. This is the entire oral and documentary evidence led from the side of both the parties.

16. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the services of the petitioner have been terminated illegally without following any sort of procedure and provisions of the Act. He further contended that the respondent in their reply filed before the Conciliation Officer has duly admitted that the petitioner had worked as seasonal worker but he was engaged as daily wager. No appointment letter had been issued to the petitioner. The respondent department had alleged that the petitioner was engaged through contractor but nothing has been placed on record. However, the respondent in cross-examination has admitted that the petitioner was never engaged through contractor. Firstly, the petitioner was engaged on muster roll basis but later on he was engaged on bill basis. It is a change in service without serving any notice under section 9-A of the Act. The instruction issued vide notification dated 04.07.2009, are not applicable in the case of the petitioner as he was engaged by the department in the year 2006 i.e much before 2009. Ld. AR argued that before engaging the services of the petitioner on bill basis, the respondent department was duty bound to fulfill the requirement of section 9-A of the Act, which is mandatory in nature and non-compliance thereto is totally illegal. He argued that one hand the respondent is claiming the petitioner to be seasonal worker and on the other hand no notice was issued to him. The petitioner has completed more than 240 working days in every calendar year and the respondent had retained the persons who are junior to the petitioner, hence, there is a violation

of sections 25-F, 25-G and 25-H of the Act. It is, therefore, prayed that the claim filed by the petitioner may kindly be allowed and the respondent may kindly be directed to re-engage the petitioner with seniority and continuity along-with full back-wages.

17. Per contra, Shri Prakash Thakur, Ld. Dy. DA for the respondent department has strenuously argued that the services of the petitioner were never terminated by the respondent rather he had left the job at his own. The petitioner was never engaged as daily wage labourer but he was engaged as seasonal worker to work in the forest nursery. The petitioner had worked with the respondent as seasonal worker in the year 2008 and thereafter he had left the job at his own sweet will. The petitioner had not completed 240 working days in any calendar year, hence, he is not entitled for the protection of section 25-F of the Act. Ld. Dy. DA argued that the petitioner had again approached the respondent department for works after a lapse of more than four years, hence, as per the instruction of government, he was again engaged as seasonal worker on bill basis. No juniors to the petitioner have been retained or engaged by the respondent. He prayed for the dismissal of the claim petition.

18. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner and Ld. Dy. DA for the respondent department and have also scrutinized the entire case record with minute care, caution and circumspection.

19. Thus, from a careful examination of entire case record, it is manifestly clear on record that as per the case set up from the side of the petitioner is not at all relating to the termination but change in the condition of service of the petitioner, whereby the respondent has offered the work to the petitioner on bill basis from March, 2013. Ld. AR for the petitioner argued that the action of the respondent in changing the working conditions w.e.f. March, 2013, by offering work on bill basis which will tantamount to the cession of work and as such will fall within the definition of section 2-oo of the Act. On the other hand, Ld. Dy. DA for the respondent has contended that neither the petitioner was engaged on daily wages basis nor as a contingent paid employee. The petitioner was engaged on seasonal basis who had worked as sessional labourer during the year 2008 and he had worked only for 29 days and thereafter the petitioner had left the job.

20. Admittedly, the petitioner was engaged on seasonal basis and he had worked on muster roll in the year 2008 for 29 days and thereafter the petitioner had left the job and thereafter the petitioner was engaged purely on bill basis w.e.f. March, 2013 and worked on quotation/limited tender basis till March, 2018. Though, the petitioner has alleged that he was engaged in the year 2006 and had worked continuously till March 2018. There is no spec of doubt about the fact that the petitioner had worked with the respondent department initially on muster roll basis w.e.f. the year 2008 and thereafter the petitioner had worked with the respondent purely on bill basis w.e.f. March, 2013 till March, 2018, which fact has been satisfactorily proved on record. The aforesaid facts makes it abundantly clear on record that the petitioner had left the job in the year 2008 and thereafter again started working with the respondent on bill basis. The petitioner had tried his level best to portray that he was in continuous service with the respondent department. It is also the contention of the petitioner that since there was change in the service condition as no notice before engaging the petitioner, on bill basis has been served upon him, as envisaged under section 9-A of the Act.

21. Both the contentions raised at bar from the side of the petitioner that he was engaged on daily wage basis and not as seasonal worker and he had completed 240 working days in every calendar year and secondly after March 2013, the work in which the petitioner was deployed was based on budgetary allocation, made by the respondent. Though, the plea of seasonal work has been raised halfheartedly in the pleadings and in fact no evidence has been led in this behalf by the

petitioner that he was engaged on daily wage basis and had worked continuously for 240 working days. The pleadings in the absence of cogent and clinching proof goes straightway.

22. So far as concerning the deployment based on the budgetary allocation, the respondent has mainly placed reliance to the notifications dated 11.07.1995 and 4.7.2009, issued by the State Government. As per the notification dated 11.07.1995, it is envisaged that the employees who had been engaged on daily wage basis, skilled or unskilled who have completed 10 years or more continuous service with a minimum of 240 working days in a calendar year, as on 31.3.1995 would be regularized w.e.f. 01.04.1995, only upto the number of posts available in the respective department. Accordingly, as per notification dated 04.07.2009, the Government has decided that in future, no contingent paid employee be engaged otherwise it will be personal responsibility of concerned official/officer.

23. Verily, in the attendant facts and circumstances of the case, the petitioner has miserably failed to prove his case by leading cogent and satisfactory evidence on record, which could go to legitimately established on record that the petitioner had actually completed 240 working prior to his alleged termination. The plea raised from the side of the petitioner regarding the change in the service condition from muster roll to bill basis is again not established on record. All the contentions raised at bar are devoid of merit. The petitioner being master of his case must prove his case by leading cogent and clinching evidence. The petitioner cannot take the benefit or undue advantage out of the weakness of the respondent's case. The bare readings of the notifications, as aforesaid, the services of those workers have been regularized who have completed 8/10 years of continuous service with successful completion of 240 working days in every calendar year. Admittedly, the petitioner had failed to prove on record that he had completed 240 working in a calendar year preceding his termination, hence, the case of the petitioner does not fairly and securely covered under the provisions of section 25-F of the Act. Similarly, the petitioner has failed to prove on record that he had been working continuously with the respondent from 2008 till December, 2013 and thereafter his services have been engaged on bill basis. In the absence of any cogent evidence on record, it cannot be said that the respondent department had violated the provisions of section 9-A of the Act.

24. So far as concerning the contention raised by the petitioner regarding unfair labour practice as envisaged under section 2-ra of the Act, illegal termination of the petitioner, which will fall under the definition of section 2-oo of the Act, as well as non-compliance of sections 25-B, 25-F, 25-G and 25-H of the Act, at the cost of repetition, it is the petitioner one who alleges must prove the said fact on record, but in the instant case the petitioner has failed to prove said factum on record by leading cogent and satisfactory evidence. The petitioner has not completed 240 working days in a calendar year. Even, if for the sake of arguments it is assumed that the petitioner had worked as seasonal workers on muster roll and bills basis, the law is very clear that he must have complete 240 working days in 12 calendar months preceding his termination but he has failed to establish this fact on record.

25. For the foregoing reasons and keeping invew my aforesaid discussion, this Tribunal concludes that the petitioner has failed to prove on record that his services have been illegally terminated by the respondent department. Therefore, he is not entitled to any relief. The issue in question is answered in negative.

ISSUE NO. 2.

26. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is not maintainable especially when the same has been presented before the Court pursuance to the reference notification received from the

appropriate government. I find, nothing wrong with this petition, which is perfactly maintainable in the present form. The issue in question is answered in negative.

ISSUE NO. 3

27. In support of this issue no evidence has been led by the respondent, which could go to show that there is no cause of action accured in favour of the petitioner. Since, I have already held under issue no.1, that the petitioner had worked as seasonal worker with the respodnent, hence, there exists cause of action in his favour. The issue in question is answered in negative.

ISSUE NO. 4

28. At the time of arguments, Ld. Dy. DA for the respondent could not explain as to how this petition is barred by limitation. There lordships of Hon'ble Supreme Court in ***(1999) 6 SCC 82, Ajayab singh Vs. Sirhind Co-operative Marketing–cum-processing Service Society Limited and Another*** have held as under:

> *"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"*

Consequently, inview of law laid down by the Hon'ble Apex Court, I hold that this petition is not time barred to which my answer is in negative.

RELIEF

29. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1 to 4, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed.** Consequently, the present reference is answered in negative by holding that the petitioner is not entitled to any relief. The petitioner is not entitled for any sort of relief from this Court/Tribunal.

30. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 119 of 2018

Instituted on : 03-07-2018

Decided on : 01-07-2023

Harinder Pal s/o Shri Ramanand, r/o Village Basal, Tehsil & District Solan, H.P.

. .*Petitioner.*

VERSUS

1. Sikand and Motors, Village Ber, P.O. Chambaghat, Tehsil & District Solan, H.P. through trs authorized signatory.

2. Ms. Indra Sikand d/o Late Shri Anand Sikand, Partner of M/s Sikand and Motors, r/o 8 Kasurbha Gandhi Mark, New Delhi-110001.

3. Mrs. Shabnam Sikand, W/o Late Shri Vikram Sikand, Partner of M/s Sikand and Motors R/o J-1147, Palam Vihar, Guragaon, Haryana. . .*Respondents*..

Reference under section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Jatinder Paul, Advocate

For the respondents No. 1 & 2 : Ex-parte

For respondent No. 3 : Ms. Kumud Thakur, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 06.04.2018, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, which reads as under:

> **"Whether demand of Sh. Harinder Pal s/o Shri Ramanand, r/o Village Basal, Tehsil & District Solan, H.P. vide demand notice dated 20.07.2016 (Copy-Enclosed) before the Occupier, M/s Sikand and Company, Chambaghat, Distt. Solan, H.P. for reinstating him as a regular employee and to provide him salary and other benefits till date as has been given to him prior to January, 2014 with interest and continuity in service since January, 2014 to till attaining the age of retirement, is legal and justified? If yes, what relief in terms of above demand notice the aggrieved workman is entitled to?"**

2. Pursuant to the aforesaid reference, the petitioner has filed the statement of claim praying therein that the Hon'ble Tribunal may kindly pass a decree/order by directing the respondents to reinstate the service of the petitioner in the respondent no. 1/Company as a regular employee and also provide all service benefits which is given as per law. Further the respondents by directed to pay the entire salary dues of the petitioner i.e. ₹ 6,84,000/- alongwith upto date interest along with ₹ 3,00,000/- as damages/ compensation in the interest of justice.

3. The lis was resisted and contested by filing written reply to the statement of claim, on behalf of respondent company, wherein they have prayed for the dismissal of the claim petition.

4. No rejoinder has been filed on behalf of the petitioner.

5. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 13.08.2022, as under:

1. Whether the demand of petitioner w.e.f. 20.07.2016 before the respondent for the prayer made therein is legal and justified, if yes, what relief the petitioner is entitled to? . .*OPP*.

2. Whether the present petition is neither competent nor maintainable in the present form, as alleged? . .*OPR* .

3. Relief

6. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no. 1	:	Decided accordingly as settled
Issue no. 2	:	Not pressed
Relief	:	Reference is answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

9. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

10. At this stage, the petitioner namely Shri Harinder Paul, has stated at bar that he had raised the demand notice dated 20.07.2016, for his reinstatement as regular employee and to provide him salary and other benefits till date as has been given to prior to Jan., 2014. The Industrial Dispute raised by him has been full & finally settled as the respondent company has agreed to pay him an amount of ₹ 45000/- (Rupees Forty Five Thousand) as full & final settlement of claim on or before 31.07.2023. Since, the matter has been resolved between the parties, hence, nothing survive in the present industrial dispute. To this effect his statement recorded separately and placed on record.

11. On the other hand Shri Neeraj Bhardwaj, Advocate for the respondent company vide his separate statement has stated that the industrial dispute raised by the petitioner has been settled

amicably as the respondent company has agreed to pay an amount of ₹ 45000/- (Rupees Forty Five Thousand) to the petitioner as full & final settlement amount. The agreed full & final settlement amount shall be paid to the petitioner on or before 31.07.2023. Now, nothing survive in the present industrial dispute which may kindly be answered accordingly.

12. Thus, keeping in view the attendant facts and circumstances of the case vis- a –vis perusal of the entire case record, which manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent company has agreed to pay a sum of ₹ 45000/- (Rupees Forty Five Thousand), as full and final settlement amount of the claim on or before 31.07.2023. From the aforesaid statements of the parties, it is apparently established on record that the parties have compromised the industrial dispute arising out of reference no. 119 of 2018 out of their own sweet will and free consent. The said compromise/settlement made between the parties is within the fore corner of the law.

13. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondents and agreed to pay a sum of ₹ 45,000/- (Rupees Forty Five Thousand only)** as lump-sum compensation to the petitioner on or before 31.07.2023. It is made clear in case, the respondents failed to pay the agreed amount of Rs. 45,000/- on or before 31.07.2023, the same shall carry interest @ 9 % from the date of award till its realization. The issue in question is answered accordingly.

ISSUE No. 2

14. In order to prove this issue, Ld. Counsel for the respondent no.3 has stated, at bar, that since the matter stood amicably resolved between the parties, hence, she does not want to press this issue. Therefore, keeping in view the statement of Ld. Counsel for the respondent no.3, the issue in question is decided accordingly.

RELIEF:

15. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled. The respondent no.3 is directed to pay a sum of ₹ 45,000/- (Rupees Forty Five Thousand only) as lump sum compensation to the petitioner on or before 31.07.2023 failing which, the same shall carry interest @ 9 % from the date of award till its realization. Consequently, the reference is answered accordingly and the award is passed as per the statements of both the parties and document (PA), which shall form an integral part and parcel of this award of mine. The reference is disposed off accordingly.

16. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01-07-2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 256 of 2020

Instituted on : 06-10-2020

Decided on : 01-07-2023

Puran Chand s/o Shri Girdhari Lal, r/o Village Chabhacha Khurd, P.O. Rouri, Tehsil Kasauli, District Solan, H.P. . .*Petitioner.*

VERSUS

The Occupier/Factory Manager, M/s R.B. Knit Exports, Village Kathla, P.O. Rauri, Sabathu Road Dharampur, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J.C. Bhardwaj, AR

For the respondent : Shri R.K. Verma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 17.09.2020, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, which reads as under:

> **"Whether termination of the services of Sh. Puran Chand s/o Shri Girdhari Lal, r/o Village Chabhacha Khurd, P.O. Rouri, Tehsil Kasauli, District Solan, H.P. by the Management i.e. Occupier/Factory Manager, M/s R.B. Knit Exports, Village Kathla, P.O. Rauri, Sabathu Road Dharampur, District Solan H.P., vide letter dated 28.02.2020 (copy enclosed) without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of service, back wages, and other consequential service benefits and compensation to the above aggrieved worker is entitled to from the above employer/management?"**

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged in the services of the respondent on 02.07.2017 on probation for a period of one year and his services were confirmed on 02.07.2018. The petitioner had worked continuously with the respondent company till his illegal and oral termination/retrenchment from service by the respondent on 28.02.2020. The petitioner has worked for more than 240 working days in a calendar year. The services of the junior workers were retained by the respondent. The petitioner was sent on leave against his will by the Factory Manager w.e.f. 16.01.2020 to 30.01.2020 and when the petitioner reported for duties on 31.01.2020, he was not allowed to join his duties and his services were terminated without issuing any notice, paying retrenchment compensation and in non-compliance of the provisions of section 25-F of the Act. The said termination order of terminating the services of the petitioner are absolutely null and void.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

"Now, it is therefore prayed that your honor may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect i.e from the date of his illegal removal/termination on 28.02.2020 with full back-wages, seniority and other consequential service benefits throughout and with costs."

4. The lis was resisted and contested by filing written reply to the statement of claim, on behalf of respondent company, on inter-alia preliminary objections of maintainability, estoppel, ulterior motive, suppression of material facts and not come to the Court with clean hands.

5. On merits, it is denied that the services of the petitioner were terminated/retrenched without assigning any cogent reason. It is further denied that the petitioner was sent on leave against his will by the Factory Manager. It is submitted that the petitioner has himself proceeded on leave and thereafter he did not join the unit. The petitioner has misbehaved with the officials of the respondent company and was not adhering to their calls and used to argue with them on very petty issues. The petitioner was advised to mend his behavior but he never showed any changes. It is further submitted that the allegations levelled in the petition in totally false and frivolous. It is denied that no fair and proper enquiry had been conducted against the petitioner. Since, the petitioner failed to report for his duties, hence, waiting for a considerable time, his services were terminated. It is therefore, prayed that claim petition of the petition may please be dismissed with special cost being devoid of merit, keeping in view the detailed submissions made hereinabove in the interest of justice.

6. No rejoinder came to be filed by the petitioner.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which is as under:

1. Whether the termination of the services of the petitioner by the respondent management w.e.f. 28.02.2020 without complying the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? If yes, what relief the petitioner is entitled to? . .*OPP.*

2. Whether the present claim petition is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed. Both the parties adduced oral and documentary evidence.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1 : Yes. Entitled for reinstatement in service with seniority and continuity along-with back-wages @ 25% to be counted from the date of termination.

Issue no. 2 : No

Relief. : Reference is answered in affirmative as per operative part of award

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn-in-affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition in verbatim. He has also tendered into evidence the representations made by him Mark PX-1 and Mark PX-2, demand notice mark PX-3 and letter from Labour Officer Mark PX-4.

12. In the cross-examination, he has stated that he joined the respondent company in 2017 and worked till 2020. He denied that he was not terminated by the respondent company. He further denied that he had not joined his duties after calling by the company. He admitted to have terminated on 28.02.2020. He further admitted that no letter was given to the respondent company after the termination of his services.

13. To refute the allegations of the petitioner, the respondent had examined Shri Amar Deep as (RW-1), who has tendered into evidence his sworn-in-affidavit (RW-1/A), wherein he has deposed that he was working as Chief Admin. Officer with the respondent company and transfer letter dated 10.01.2020 was issued by him but the petitioner refused to accept the same. The petitioner despite receiving the transfer letter through registered letter failed to join his duties at transferred place. He also tendered in evidence transfer letter (R-2) and reminder (R-3).

14. In cross-examination, he admitted that the Certified Standing Orders are applicable in the company. He denied that there is no provision of transfer in Standing Orders. He denied that the services of the petitioner were terminated during COVID-19 period. He denied that no letter was issued to the petitioner for wilful absence and resuming the work. He admitted that neither chargesheet was issued nor enquiry was conducted. He admitted that no compensation was paid to the petitioner by him.

15. Another witness Shri Ram Kumar, had stepped into the witness box as (RW-2) and tendered into evidence his sworn-in affidavit (RW-2/A), wherein he has reiterated almost all the averments as made thereto in the reply. He also tendered into evidence authority letter (R-4) and experience certificate (R-5).

16. When cross-examined, he admitted that the Factory gate was closed during COVID-19 pandemic. He further admitted that the Factory was opened on the instruction of Government. He denied that the petitioner had come to the factory on 04.04.2020 to join his duties. He admitted that the salary of the petitioner for the month of March, 2020 was paid to him in the month of April, 2020. He admitted that the petitioner was transferred on 10.01.2020. He feigned ignorance that the presence of the petitioner was marked at Dharampur till 24.03.2020. He admitted that the petitioner was not taken back to the work after 25.03.2020. He admitted that no letter regarding absence was given to the petitioner. He also admitted that neither chargesheet nor show cause notice was issued and no enquiry was conducted. He admitted that certified standing orders are applicable in the company.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the services of the petitioner had been terminated orally without following any procedure and that too during the period of COVID-19 pandemic. The said termination is illegal, hence, the petitioner deserves to be reinstated along-with all consequential service benefits including full back-wages.

19. Per contra, Shri R.K Verma, Ld. Counsel for the respondent company has strenuously argued that the services of the petitioner were never terminated by the respondent company. The services of the petitioner were transferred from Dharampur to Ludhiana (Punjab) but he had failed to join his duties at the transferred place. He further argued that the petitioner has miserably failed to prove his termination from the service. The petitioner had himself abandoned the job. He had concealed the material facts from this Court/Tribunal. Ld. Counsel argued that it is a simple case of transfer and not termination. Similarly, the case of abandonment and not retrenchment. It is, therefore, prayed that the claim filed by the petitioner may kindly be dismissed with costs.

20. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Admittedly, the services of the petitioner were engaged by the respondent w.e.f. 02.07.2017 and he had worked continuously till 28.02.2020. It is also not in dispute that the petitioner had completed more than 240 working days in each calendar year. It is also an admitted position on record that at the time of termination/retrenchment of the petitioner no notice or chargesheet or retrenchment compensation was ever paid to the petitioner. Since, the petitioner had worked continuously with the respondent company from 02.07.2017, therefore, it stands clearly established on record that the petitioner had worked for more than 240 working days in the preceding twelve calendar months from the date of termination/retrenchment.

22. The respondent in their reply have taken the plea that the services of the petitioner were never terminated by the respondent company rather he himself abandoned the job and despite having been called he failed to report for his duties, hence, his services were terminated vide letter dated 28.02.2020. Whereas, while leading evidence the plea raised by the respondent is that the services of the petitioner have been transferred Dharampur to Ludhiana vide transfer letter dated 10.01.2020. Similarly, letter dated 01.08.2020, has also been issued. As per the reply, it is averred that the services of the petitioner were neither terminated nor retrenched orally or otherwise by the respondent. The petitioner himself had abandoned his job by not reporting for duties at the transferred place. It is further averred that it is the case of transfer and abandonment and not the termination or retrenchment.

23. On the other hand, the case set-up from the side of the petitioner is that the factory was closed due to COVID-19 and it was opened on 20.04.2020 but the petitioner was not allowed to enter the factory premises by the management. The petitioner again went to resume his duties but was not allowed to resume his duties.

24. In the backdrop of aforesaid events, there is no speck of doubt about the fact that there was an outbreak of Pandemic Corona Virus -2019, much known as COVID-19. It is also an admitted fact that the entire country was facing the putting of lock-down right from 24.03.2020 to 08.06.2020. In this regard there were instructions issued from the Ministry of Labour & Employment Government of India vide DO No. M-11011/08/2020-Media dated 20.03.2020, which cannot remained un-noticed to be implemented in such precarious situation.

"The World is facing a catastrophic situation due to outbreak of COVID- 19 and in order to combat this challenge, coordinated joint efforts of all Sections of the Society is

required. In view of the above, there may be incidence that employee's/worker's services are dispensed with on this pretext or the employee/worker are forced to go on leave without wage/salaries. In the backdrop of such challenging situation, all the Employers of Public/Private Establishments may be advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period. Further, if the place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty. The termination of employee from the job or reduction in wages in this scenario would further deepen the crises and will not only weaken the financial condition of the employee but also hamper their morale to combat their fight with this epidemic, In view of this, you are requested to issue necessary Advisory to the Employers/Owners of all the establishments in the State.

25. Therefore, keeping inview the aforesaid notification the transfer and thereafter termination of the services of the petitioner that too during COVID-19 Pandemic, is illegal and unjustified.

26. The petitioner has placed on record the transfer order dated 28.02.2020, wherein it has been specifically mentioned that **"your services are no longer required at RB Knit Exports Khatla with reference to your letter received 28.02.2020, through post office, the company is undergoing with financial losses due to which certain employees are being relieved from factory. As you have already submitted application in Labour Court dated 25.02.2020, your full and final settlement will be cleared by Labour Court".** Furthermore, in order to plea of abandonment, there is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume his duties. From the record, it is also quite clear that before terminating the services of the petitioner neither he had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned his job but there is no such material which could go to show that any notice had been issued to him for resuming his duties. *It has been held by the* ***Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub that:***

"When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."

It was further held that :

"The principles of natural justice were required to be followed by giving opportunity to the workman.

"The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty.

The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

27. Thus, Having regard to the law laid down by the Hon'ble Apex Court (supra) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that she had not abandoned the job at his own.

28. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

29. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

30. From the persual of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but he was not allowed to join his duties. Hence, the case of the petitioner clearly falls under the defination of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisons of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act as no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

31. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

32. For the foregoing reason, this Court/Tribunal comes to an inescapable conclusion that the petitioner had not abandoned his job at his own rather his services have been termianted by the respondent on account of alleged transfer and that too during the period of Pandemic COVID-19, which to totally illegal and unjustified. The petitioner is held entitled for re-instatement in service with seniority and continuity. Keeping in view the peculiar facts and circumstances of the present case, the petitioner is also held entitled for back-wages @ 25% to be counted from the date of his transfer/termination, which is held to be unjust illegal and malafide. The issue in question is decided accordingly.

ISSUE NO.2

33. In order to prove this issue, no evidence has been led by the respondent which could go to show that as to how the present petition is neither competant nor maintainable especially when the same was filed pursuant to the reference received from the appropriate government. I find nothing wrong with the present petition, which is perfectably maintainable. Accordingly, the issue in question is answered against the respondent company.

RELIEF

34. As a squitter, to my foregoing discussion and findings on issues no. 1 &2 above, the claim filed by the petitioner succeeds and is hereby allowed.

35. Resultantly, the respondent company is directed to re-engage the petitioner on the same post and place i.e at Dharampur, Himachal Pradesh with seniority and continuity along-with back-wages @ 25% to be counted from the date of his illegal transfer/retrenchment. The awarded back wages shall be paid within a period of two months from the date of award i.e 1.7.2023, failing which the same shall carry interest @ 9% per annum. The reference sent by the appropriate government is answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 119 of 2021

Instituted on : 13-08-2021

Decided on : 01-07-2023

Yash Pal s/o Shri Roshan Lal, r/o Village Kahno, P.O. Rouri, Tehsil Kasauli, District Solan, H.P. . .*Petitioner.*

VERSUS

The Occupier/Factory Manager, M/s R.B. Knit Exports, Village Kathla, P.O. Rauri, Sabathu Road Dharampur, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J. C. Bhardwaj, AR

For the respondent : Shri R. K. Verma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 30.06.2021, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, which reads as under:

> **"Whether termination of the services of Sh. Yash Pal s/o Shri Roshan Lal, r/o Village Kahno, P.O. Rouri, Tehsil Kasauli, District Solan, H.P. w.e.f. 03.01.2020 by the management i.e. Occupier/Factory Manager, M/s R.B. Knit Exports, Village Kathla PO Rauri, Sabathu Road Dharampur, District Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of service, back wages, and other consequential service benefits and compensation to the above aggrieved workman is entitled to from the above stated employer/ management?"**

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged in the services of the respondent in the month of April, 1992 and his services were confirmed on 01.04.1998. The petitioner had worked continuously with the respondent company till his illegal and oral termination/retrenchment from service by the respondent on 03.01.2020. The services of the petitioner have been transferred to Ludhiana, where he could not join as his son was suffering with disease of cancer and as such he made the representation to the management praying therein that he may allow to continue with his job in the respondent factory but of no avail. The petitioner has worked for more than 240 working days in a calendar year. The services of the junior workers were retained by the respondent. The company was declared closed due to Pandemic COVID-19 (Corona Virus) and it was opened on 20.04.2020. When, the petitioner went to join his duties, he was not allowed to join his duties and he was told that his services have already been terminated on 03.01.2020. The petitioner was not allowed to join his duties and his services were terminated without issuing any notice, paying retrenchment compensation and in non-compliance of the provisions of section 25-F of the Act. The said termination order of terminating the services of the petitioner are absolutely null and void.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

> **"Now, it is therefore prayed that your honor may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect i.e from the date of his illegal removal/ termination on 03.01.2020 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by filing written reply to the statement of claim, on behalf of respondent company, on inter-alia preliminary objections of maintainability, estoppel, ulterior motive, suppression of material facts and not come to the Court with clean hands.

5. On merits, it is denied that the services of the petitioner were terminated/retrenched on 03.01.2020 without assigning any cogent reason. It is further denied that the company was closed due to COVID-19. It is submitted that the petitioner was transferred from R.B Knit Exports, Solan to R.B Knit Exports, 415 Industrial Area- A, Ludhiana, Punjab as per his experience and work profile vide transfer order dated 26.12.2019. It is further submitted that the allegations levelled in the petition in totally false and frivolous. It is denied that no fair and proper enquiry had been conducted against the petitioner. Since, the date of his transfer, the petitioner had not joined at the transferred place and refused to join at transferred place. The services of the petitioner were never terminated/retrenched. It is therefore, prayed that claim petition of the petition may please be dismissed with special cost being devoid of merit, keeping in view the detailed submissions made hereinabove in the interest of justice.

6. No rejoinder came to be filed by the petitioner.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which is as under:

1. Whether the termination of the services of the petitioner by the respondent management w.e.f. 24.03.2020 without complying the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? If yes, what relief the petitioner is entitled to? . .*OPP.*

2. Whether the present claim petition is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed. Both the parties adduced oral and documentary evidence.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1 : Yes. Entitled for reinstatement in service with seniority and continuity along-with back-wages @ 25% to be counted from the date of termination.

Issue no. 2 : No

Relief : Reference is answered in affirmative as per operative part of award

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn-in-affidavit (PW-1/A), wherein he had categorically

reiterated almost all the averments, made thereto in the claim petition in verbatim. He has also tendered into evidence the OPD book (PW-1/B) and representations made by him Mark PX-1 to Mark PX-3.

12. In the cross-examination, he has stated that he joined the respondent company in the year 1992 and appointment letter (RX-1) was issued in 1998, which bears his signatures. He admitted that he had not mentioned about his transfer in the demand notice. Volunteered that no transfer letter was issued to him. He denied that he was asked telephonically by the company to join at the transferred place. He admitted that he could not join the transferred place as his son was suffering from cancer.

13. To refute the allegations of the petitioner, the respondent had examined Shri Amar Deep as (RW-1), who has tendered into evidence his sworn-in-affidavit (RW-1/A), wherein he has deposed that he was working as Chief Admin Officer with the respondent company and transfer letter dated 10.01.2020 was issued by him but the petitioner refused to accept the same. The petitioner despite receiving the transfer letter through registered letter failed to join his duties at transferred place. He also tendered in to evidence transfer letter (RX-3).

14. In cross-examination, he admitted that the Certified Standing Orders are applicable in the company. He denied that there is no provision of transfer in Standing Orders. He denied that the services of the petitioner were terminated during COVID-19 period. He denied that no letter was issued to the petitioner for wilful absence and resuming the work. He admitted that neither chargesheet was issued nor enquiry was conducted. He admitted that no compensation was paid to the petitioner by him.

15. Another witness Shri Ram Kumar, had stepped into the witness box as (RW-2) and tendered into evidence his sworn-in affidavit (RW-2/A), wherein he has reiterated almost all the averments as made thereto in the reply. He also tendered into evidence authority letter (R-4) and experience certificate (R-5).

16. When cross-examined, he deposed that the transfer order dated 10.01.2020 was sent to the petitioner by post. He denied that the petitioner was sent forcibly on leave for 15 days in 2020. He denied that there is no provision for inter unit/interstate transfer in Standing Orders.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the services of the petitioner had been terminated orally without following any procedure and that too during the period of COVID-19 pandemic. The said termination is illegal, hence, the petitioner deserves to be reinstated along-with all consequential service benefits including full back-wages.

19. Per contra, Shri R.K. Verma, Ld. Counsel for the respondent company has strenuously argued that the services of the petitioner were never terminated by the respondent company. The services of the petitioner were transferred from Dharampur to Ludhiana (Punjab) but he had failed to join his duties at the transferred place. He further argued that the petitioner has miserably failed to prove his termination from the service. The petitioner had himself abandoned the job. He had concealed the material facts from this Court/Tribunal. Ld. Counsel argued that it is a simple case of transfer and not termination. Similarly, the case of abandonment and not retrenchment. It is, therefore, prayed that the claim filed by the petitioner may kindly be dismissed with costs.

20. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Admittedly, the services of the petitioner were engaged by the respondent during the month of April, 1992 and he had worked continuously till 03.01.2020. It is also not in dispute that the petitioner had completed more than 240 working days in each calendar year. It is also an admitted position on record that at the time of termination/retrenchment of the petitioner no notice or chargesheet or retrenchment compensation was ever paid to the petitioner. Since, the petitioner had worked continuously with the respondent company from April 1992 to Jan., 2020, therefore it stands clearly established on record that the petitioner had worked for more than 240 working days in the preceding twelve calendar months from the date of termination/retrenchment.

22. The only plea raised by the respondent is that the services of the petitioner have been transferred Dharampur to Ludhiana vide transfer letter dated 10.01.2020. Similarly, letter dated 26.12.2019, has also been issued. As per the reply, it is averred that the services of the petitioner were neither terminated nor retrenched orally or otherwise by the respondent. The petitioner himself had abandoned his job by not joining at the transferred place. It is further averred that it is the case of transfer and abandonment and not the termination or retrenchment.

23. On the other hand, the case set-up from the side of the petitioner is that the factory was closed due to COVID-19 and it was opened on 20.04.2020 but the petitioner was not allowed to enter the factory premises by the management despite requests. The petitioner again went to resume his duties but was not allowed to resume his duties.

24. In the backdrop of aforesaid events, there is no speck of doubt about the fact that there was an outbreak of Pandemic Corona Virus -2019, much known as COVID-19. It is also an admitted fact that the entire country was facing the putting of lock-down right from 24.03.2020 to 08.06.2020. In this regard there were instructions issued from the Ministry of Labour & Employment Government of India vide DO No. M-11011/08/2020-Media dated 20.03.2020, which cannot remained un-noticed to be implemented in such precarious situation.

> **"The World is facing a catastrophic situation due to outbreak of COVID- 19 and in order to combat this challenge, coordinated joint efforts of all Sections of the Society is required. In view of the above, there may be incidence that employee's/worker's services are dispensed with on this pretext or the employee/worker are forced to go on leave without wage/salaries. In the backdrop of such challenging situation, all the Employers of Public/Private Establishments may be advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period. Further, if the place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty. The termination of employee from the job or reduction in wages in this scenario would further deepen the crises and will not only weaken the financial condition of the employee but also hamper their morale to combat their fight with this epidemic, In view of this, you are requested to issue necessary Advisory to the Employers/Owners of all the establishments in the State.**

25. Therefore, keeping in view the aforesaid notification the transfer and thereafter termination of the services of the petitioner that too during COVID-19 Pandemic, is illegal and unjustified

26. In order to plea of abandonment, there is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume his duties. From the record, it is also quite clear that before terminating the services of the petitioner neither he

had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned his job but there is no such material which could go to show that any notice had been issued to him for resuming his duties. *It has been held by the* ***Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub that:***

> ***"When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."***

It was further held that :

> ***"The principles of natural justice were required to be followed by giving opportunity to the workman.***
>
> ***"The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."***

27. Thus, Having regard to the law laid down by the Hon'ble Apex Court (supra) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that she had not abandoned the job at her own.

28. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

29. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

30. From the persual of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but he was not allowed to join his duties. Hence, the case of the petitioner clearly falls under the defination of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the

requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisons of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act as no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under section 25-B of the Act. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

31. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

32. For the foregoing reason, this Court/Tribunal comes to an inescapable conclusion that the petitioner had not abandoned his job at his own rather his services have been termianted by the respondent on account of alleged transfer and that too during the period of Pandemic COVID-19, which to totally illegal and unjustified. The petitioner is held entitled for re-instatement in service with seniority and continuity. Keeping in view the peculiar facts and circumstances of the present case, the petitioner is also held entitled for back-wages @ 25% to be counted from the date of his transfer/termination, which is held to be unjust illegal and malafide. The issue in question is decided accordingly.

ISSUE NO. 2.

33. In order to prove this issue, no evidence has been led by the respondent which could go to show that as to how the present petition is neither competant nor maintainable especially when the same was filed pursuant to the reference received from the appropriate government. I find nothing wrong with the present petition, which is perfectably maintainable. Accordingly, the issue in question is answered against the respondent company.

RELIEF

34. As a squitter, to my foregoing discussion and findings on issues no. 1 & 2 above, the claim filed by the petitioner succeeds and is hereby allowed.

35. Resultantly, the respondent company is directed to re-engage the petitioner on the same post and place i.e at Dharampur, Himachal Pradesh with seniority and continuity along-with back-wages @ 25% to be counted from the date of his illegal transfer/retrenchment. The awarded back wages shall be paid within a period of two months from the date of award i.e. 1.7.2023, failing which the same shall carry interest @ 9% per

annum. The reference sent by the appropriate government is answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 120 of 2021

Instituted on : 13-08-2021

Decided on : 01-07-2023

Jitender Kumar s/o Shri Om Prakash, r/o Village Kathla, P.O. Rouri, Tehsil Kasauli, District Solan, H.P. . .*Petitioner.*

VERSUS

The Occupier/Factory Manager, M/s R. B. Knit Exports, Village Kathla, P.O. Rauri, Sabathu Road Dharampur, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J.C. Bhardwaj, AR.

For the respondent : Shri R.K. Verma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 30.06.2021, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, which reads as under:

"Whether termination of the services of Sh. Jitender Kumar s/o Shri Om Prakash, r/o Village Kathla, P.O. Rouri, Tehsil Kasauli, District Solan, HP w.e.f. 24.03.2020 by the management i.e. **Occupier/Factory Manager, M/s R.B. Knit Exports, Village Kathla, P.O. Rauri, Sabathu Road Dharampur, District Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of service, back wages, and other consequential service benefits and compensation to the above aggrieved workman is entitled to from the above stated employer/ management?"**

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged in the services of the respondent in the month of June, 2009 and his services were confirmed on 01.10.2013. The petitioner had worked continuously with the respondent company till his illegal and oral termination/retrenchment from service by the respondent on 24.03.2020. The petitioner has worked for more than 240 working days in a calendar year. The services of the junior workers were retained by the respondent. The company was declared closed due to Pandemic COVID-19 (Corona Virus) and it was opened on 20.04.2020. When, the petitioner went to join his duties, he was not allowed to join his duties and was asked to report for duty after expiring of few days and thereafter the petitioner had again visited the company premises to resume his duties after 15 days on 05.05.2020, but he was again asked to wait for some. The petitioner was not allowed to join his duties and his services were terminated without issuing any notice, paying retrenchment compensation and in non-compliance of the provisions of section 25-F of the Act. The said termination order of terminating the services of the petitioner are absolutely null and void.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

> **"Now, it is therefore prayed that your honor may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect i.e from the date of his illegal removal/ termination on 24.03.2020 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by filing written reply to the statement of claim, on behalf of respondent company, on inter-alia preliminary objections of maintainability, estoppel, ulterior motive, suppression of material facts and not come to the Court with clean hands.

5. On merits, it is denied that the services of the petitioner were terminated/retrenched on 24.03.2020 without assigning any cogent reason. It is further denied that the company was closed due to COVID-19. It is submitted that the petitioner was transferred from R.B. Knit Exports, Solan to R.B. Knit Exports, 415 Industrial Area- A, Ludhiana, Punjab as per his experience and work profile vide transfer order dated 10.01.2020. It is further submitted that the allegations levelled in the petition in totally false and frivolous. It is denied that no fair and proper enquiry had been conducted against the petitioner. Since, the date of his transfer, the petitioner had not joined at the transferred place and refused to join at transferred place. The services of the petitioner were never terminated/retrenched. It is therefore, prayed that claim petition of the petition may please be dismissed with special cost being devoid of merit, keeping in view the detailed submissions made hereinabove in the interest of justice.

6. No rejoinder came to be filed by the petitioner.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which is as under:

1. Whether the termination of the services of the petitioner by the respondent management w.e.f. 24.03.2020 without complying the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? If yes, what relief the petitioner is entitled to? . .*OPP.*

2. Whether the present claim petition is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed. Both the parties adduced oral and documentary evidence.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	:	Yes. Entitled for reinstatement in service with seniority and continuity along-with back-wages @ 25% to be counted from the date of termination.
Issue no. 2	:	No
Relief	:	Reference is answered in affirmative as per operative part of award

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn-in-affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition in verbatim. He has also tendered into evidence the representation made by him Mark PX-1.

12. In the cross-examination, he has stated that he joined the respondent company in the year 1996. He admitted that he had not mentioned about his transfer in the demand notice. Volunteered that no transfer letter was issued to him. He denied that he was asked telephonically by the company to join at the transferred place.

13. To refute the allegations of the petitioner, the respondent had examined Shri Amar Deep as (RW-1), who has tendered into evidence his sworn-in-affidavit (RW-1/A), wherein he has deposed that he was working as Chief Admin. Officer with the respondent company and transfer letter dated 10.01.2020 was issued by him but the petitioner refused to accept the same. The petitioner despite receiving the transfer letter through registered letter failed to join his duties at transferred place.

14. In cross-examination, he admitted that the Certified Standing Orders are applicable in the company. He denied that there is no provision of transfer in Standing Orders. He denied that the services of the petitioner were terminated during COVID-19 period. He denied that no letter was issued to the petitioner for wilful absence and resuming the work. He admitted that neither chargesheet was issued nor enquiry was conducted. He admitted that no compensation was paid to the petitioner by him.

15. Another witness Shri Ram Kumar, had stepped into the witness box as (RW-2) and tendered into evidence his sworn-in affidavit (RW-2/A), wherein he has reiterated almost all the averments as made thereto in the reply. He also tendered into evidence authority letter (R-4) and experience certificate (R-5).

16. When cross-examined, he admitted that the Factory gate was closed during COVID-19 pandemic. He further admitted that the Factory was opened on the instruction of Government. He denied that the petitioner had come to the factory on 04.04.2020 to join his duties. He admitted that the salary of the petitioner for the month of March, 2020 was paid to him in the month of April, 2020. He admitted that the petitioner was transferred on 10.01.2020. He feigned ignorance that the presence of the petitioner was marked at Dharampur till 24.03.2020. He admitted that the petitioner was not taken back to the work after 25.03.2020. He admitted that no letter regarding absence was given to the petitioner. He also admitted that neither chargesheet nor show cause notice was issued and no enquiry was conducted. He admitted that certified standing orders are applicable in the company.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the services of the petitioner had been terminated orally without following any procedure and that too during the period of COVID-19 pandemic. The said termination is illegal, hence, the petitioner deserves to be reinstated along-with all consequential service benefits including full back-wages.

19. Per contra, Shri R.K. Verma, Ld. Counsel for the respondent company has strenuously argued that the services of the petitioner were never terminated by the respondent company. The services of the petitioner were transferred from Dharampur to Ludhiana (Punjab) but he had failed to join his duties at the transferred place. He further argued that the petitioner has miserably failed to prove his termination from the service. The petitioner had himself abandoned the job. He had concealed the material facts from this Court/Tribunal. Ld. Counsel argued that it is a simple case of transfer and not termination. Similarly, the case of abandonment and not retrenchment. It is, therefore, prayed that the claim filed by the petitioner may kindly be dismissed with costs.

20. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Admittedly, the services of the petitioner were engaged by the respondent during the month of June, 2009 and he had worked continuously till 24.03.2020. It is also not in dispute that the petitioner had completed more than 240 working days in each calendar year. It is also an admitted position on record that at the time of termination/retrenchment of the petitioner no notice or chargesheet or retrenchment compensation was ever paid to the petitioner. Since, the petitioner had worked continuously with the respondent company from June, 2009 to March 2020, therefore it stands clearly established on record that the petitioner had worked for more than 240 working days in the preceding twelve calendar months from the date of termination/retrenchment.

22. The only plea raised by the respondent is that the services of the petitioner have been transferred Dharampur to Ludhiana vide transfer letter dated 10.01.2020. Similarly, letter dated 01.08.2020, has also been issued. As per the reply, it is averred that the services of the petitioner were neither terminated nor retrenched orally or otherwise by the respondent. The petitioner himself had abandoned his job by not joining at the transferred place. It is further averred that it is the case of transfer and abandonment and not the termination or retrenchment.

23. On the other hand, the case set-up from the side of the petitioner is that the factory was closed due to COVID-19 and it was opened on 20.04.2020 but the petitioner was not allowed to enter the factory premises by the management. The petitioner again went to resume his duties but was not allowed to resume his duties.

24. In the backdrop of aforesaid events, there is no speck of doubt about the fact that there was an outbreak of Pandemic Corona Virus -2019, much known as COVID-19. It is also an admitted fact that the entire country was facing the putting of lock-down right from 24.03.2020 to 08.06.2020. In this regard there were instructions issued from the Ministry of Labour & Employment Government of India vide DO No. M-11011/08/2020-Media dated 20.03.2020, which cannot remained un-noticed to be implemented in such precarious situation.

> **"The World is facing a catastrophic situation due to outbreak of COVID-19 and in order to combat this challenge, coordinated joint efforts of all Sections of the Society is required. In view of the above, there may be incidence that employee's/worker's services are dispensed with on this pretext or the employee/worker are forced to go on leave without wage/salaries. In the backdrop of such challenging situation, all the Employers of Public/Private Establishments may be advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period. Further, if the place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty. The termination of employee from the job or reduction in wages in this scenario would further deepen the crises and will not only weaken the financial condition of the employee but also hamper their morale to combat their fight with this epidemic, In view of this, you are requested to issue necessary Advisory to the Employers/Owners of all the establishments in the State.**

25. Therefore, keeping in view the aforesaid notification the transfer and thereafter termination of the services of the petitioner that too during COVID-19 Pandemic, is illegal and unjustified

26. In order to plea of abandonment, there is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume his duties. From the record, it is also quite clear that before terminating the services of the petitioner neither he had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned his job but there is no such material which could go to show that any notice had been issued to him for resuming his duties. *It has been held by the* ***Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub that:***

> ***"When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."***
>
> *It was further held that :*
>
> ***"The principles of natural justice were required to be followed by giving opportunity to the workman.***
>
> ***"The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even***

though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

27. Thus, Having regard to the law laid down by the Hon'ble Apex Court (supra) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that she had not abandoned the job at her own.

28. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

29. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

30. From the persual of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but he was not allowed to join his duties. Hence, the case of the petitioner clearly falls under the defination of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisons of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act as no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under section 25-B of the Act. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

31. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

32. For the foregoing reason, this Court/Tribunal comes to an inescapable conclusion that the petitioner had not abandoned his job at his own rather his services have been termianted by the respondent on account of alleged transfer and that too during the period of Pandemic COVID-19, which to totally illegal and unjustified. The petitioner is held entitled for re-instatement in service with seniority and continuity. Keeping in view the peculiar facts and circumstances of the present case, the petitioner is also held entitled for back-wages @ 25% to be counted from the date of his transfer/termination, which is held to be unjust illegal and malafide. The issue in question is decided accordingly.

ISSUE NO. 2

33. In order to prove this issue, no evidence has been led by the respondent which could go to show that as to how the present petition is neither competant nor maintainable especially when the same was filed pursuant to the reference received from the appropriate government. I find nothing wrong with the present petition, which is perfectably maintainable. Accordingly, the issue in question is answered against the respondent company.

RELIEF

34. As a squitter, to my foregoing discussion and findings on issues no. 1 &2 above, the claim filed by the petitioner succeeds and is hereby allowed.

35. Resultantly, the respondent company is directed to re-engage the petitioner on the same post and place i.e at Dharampur, Himachal Pradesh with seniority and continuity along-with back-wages @ 25% to be counted from the date of his illegal transfer/ retrenchment. The awarded back wages shall be paid within a period of two months from the date of award i.e 1.7.2023, failing which the same shall carry interest @ 9% per annum. The reference sent by the appropriate government is answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 256 of 2021

Instituted on : 13-12-2021

Decided on : 01-07-2023

Hukum Chand s/o Shri Nand Lal, r/o Village Chavchhaa Khurd, P.O. Rouri, Tehsil Kasauli, District Solan, H.P. . .*Petitioner.*

VERSUS

The Occupier/Factory Manager, M/s R.B. Knit Exports, Village Kathla, P.O. Rauri, Sabathu Road Dharampur, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J. C. Bhardwaj, AR

For the respondent : Shri R. K. Verma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 30.06.2021, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, which reads as under:

> **"Whether termination of the services of Sh. Hukum Chand s/o Shri Nand Lal, r/o Village Chavchhaa Khurd, P.O. Rouri, Tehsil Kasauli, District Solan, H.P. w.e.f. 24.03.2020 by the management i.e Occupier/Factory Manager, M/s R. B. Knit Exports Village Kathla, P.O. Rauri, Sabathu Road Dharampur, District Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of service, back wages, and other consequential service benefits and compensation to the above aggrieved workman is entitled to from the above stated employer/ management?"**

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged in the services of the respondent in the month of April, 2014 and his services were confirmed on 01.07.2018. The petitioner had worked continuously with the respondent company till his illegal and oral termination/retrenchment from service by the respondent on 24.03.2020. The petitioner has worked for more than 240 working days in a calendar year. The services of the junior workers were retained by the respondent. The company was declared closed due to Pandemic COVID-19 (Corona Virus) and it was opened on 20.04.2020. When, the petitioner went to join his duties, he was not allowed to join his duties and was asked to report for duty after expiring of few days and thereafter the petitioner had again visited the company premises to resume his duties after 15 days on 05.05.2020, but he was again asked to wait for some. The petitioner was not allowed to join his duties and his services were terminated without issuing any notice, paying retrenchment compensation and in non-compliance of the provisions of section 25-F of the Act. The said termination order of terminating the services of the petitioner are absolutely null and void.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

> **"Now, it is therefore prayed that your honor may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect i.e. from the date of his illegal removal/ termination on 24.03.2020 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by filing written reply to the statement of claim, on behalf of respondent company, on *inter-alia* preliminary objections of maintainability, estoppel, ulterior motive, suppression of material facts and not come to the Court with clean hands.

5. On merits, it is denied that the services of the petitioner were terminated/retrenched on 24.03.2020 without assigning any cogent reason. It is further denied that the company was closed due to COVID-19. It is submitted that the petitioner was transferred from R.B. Knit Exports, Solan to R.B. Knit Exports, 415 Industrial Area- A, Ludhiana, Punjab as per his experience and work profile vide transfer order dated 10.01.2020. It is further submitted that the allegations levelled in the petition in totally false and frivolous. It is denied that no fair and proper enquiry had been conducted against the petitioner. Since, the date of his transfer, the petitioner had not joined at the transferred place and refused to join at transferred place. The services of the petitioner were never terminated/retrenched. It is therefore, prayed that claim petition of the petition may please be dismissed with special cost being devoid of merit, keeping in view the detailed submissions made hereinabove in the interest of justice.

6. No rejoinder came to be filed by the petitioner.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which is as under:

1. Whether the termination of the services of the petitioner by the respondent management w.e.f. 24.03.2020 without complying the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? If yes, what relief the petitioner is entitled to? . .*OPP.*

2. Whether the present claim petition is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed. Both the parties adduced oral and documentary evidence.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	:	Yes. Entitled for reinstatement in service with seniority and continuity along-with back-wages @ 25% to be counted from the date of termination.
Issue no. 2	:	No
Relief	:	Reference is answered in affirmative as per operative part of award

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn-in-affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition in verbatim. He has also tendered into evidence the representation made by him Mark PX-1.

12. In the cross-examination, he has stated that he joined the respondent company in the year 2013 and the appointment letter Mark RX-1 was issued in 2014. He admitted that he had not mentioned about his transfer in the demand notice. Volunteered that no transfer letter was issued to him. He denied that he was asked telephonically by the company to join at the transferred place.

13. To refute the allegations of the petitioner, the respondent had examined Shri Amar Deep as (RW-1), who has tendered into evidence his sworn-in-affidavit (RW-1/A), wherein he has deposed that he was working as Chief Admin. Officer with the respondent company and transfer letter dated 10.01.2020 was issued by him but the petitioner refused to accept the same. The petitioner despite receiving the transfer letter through registered letter failed to join his duties at transferred place.

14. In cross-examination, he admitted that the Certified Standing Orders are applicable in the company. He denied that there is no provision of transfer in Standing Orders. He denied that the services of the petitioner were terminated during COVID-19 period. He denied that no letter was issued to the petitioner for wilful absence and resuming the work. He admitted that neither chargesheet was issued nor enquiry was conducted. He admitted that no compensation was paid to the petitioner by him.

15. Another witness Shri Ram Kumar, had stepped into the witness box as (RW-2) and tendered into evidence his sworn-in affidavit (RW-2/A), wherein he has reiterated almost all the averments as made thereto in the reply. He also tendered into evidence authority letter (R-4) and experience certificate (R-5).

16. When cross-examined, he admitted that the Factory gate was closed during COVID-19 pandemic. He further admitted that the Factory was opened on the instruction of Government. He denied that the petitioner had come to the factory on 04.04.2020 to join his duties. He admitted that the salary of the petitioner for the month of March, 2020 was paid to him in the month of April, 2020. He admitted that the petitioner was transferred on 10.01.2020. He feigned ignorance that the presence of the petitioner was marked at Dharampur till 24.03.2020. He admitted that the petitioner was not taken back to the work after 25.03.2020. He admitted that no letter regarding absence was given to the petitioner. He also admitted that neither chargesheet nor show cause notice was issued and no enquiry was conducted. He admitted that certified standing orders are applicable in the company.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the services of the petitioner had been terminated orally without following any procedure and that too during the period of COVID-19 pandemic. The said termination is illegal, hence, the petitioner deserves to be reinstated along-with all consequential service benefits including full back-wages.

19. Per contra, Shri R.K. Verma, Ld. Counsel for the respondent company has strenuously argued that the services of the petitioner were never terminated by the respondent company. The services of the petitioner were transferred from Dharampur to Ludhiana (Punjab) but he had failed to join his duties at the transferred place. He further argued that the petitioner has miserably failed to prove his termination from the service. The petitioner had himself abandoned the job. He had concealed the material facts from this Court/Tribunal. Ld. Counsel argued that it is a simple case of transfer and not termination. Similarly, the case of abandonment and not retrenchment. It is, therefore, prayed that the claim filed by the petitioner may kindly be dismissed with costs.

20. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Admittedly, the services of the petitioner were engaged by the respondent during the month of April, 2014 and he had worked continuously till 24.03.2020. It is also not in dispute that the petitioner had completed more than 240 working days in each calendar year. It is also an admitted position on record that at the time of termination/retrenchment of the petitioner no notice or chargesheet or retrenchment compensation was ever paid to the petitioner. Since, the petitioner had worked continuously with the respondent company from April 2014 to March 2020, therefore it stands clearly established on record that the petitioner had worked for more than 240 working days in the preceding twelve calendar months from the date of termination/retrenchment.

22. The only plea raised by the respondent is that the services of the petitioner have been transferred Dharampur to Ludhiana vide transfer letter dated 10.01.2020. Similarly, letter dated 01.08.2020, has also been issued. As per the reply, it is averred that the services of the petitioner were neither terminated nor retrenched orally or otherwise by the respondent. The petitioner himself had abandoned his job by not joining at the transferred place. It is further averred that it is the case of transfer and abandonment and not the termination or retrenchment.

23. On the other hand, the case set-up from the side of the petitioner is that the factory was closed due to COVID-19 and it was opened on 20.04.2020 but the petitioner was not allowed to enter the factory premises by the management. The petitioner again went to resume his duties but was not allowed to resume his duties.

24. In the backdrop of aforesaid events, there is no speck of doubt about the fact that there was an outbreak of Pandemic Corona Virus -2019, much known as COVID-19. It is also an admitted fact that the entire country was facing the putting of lock-down right from 24.03.2020 to 08.06.2020. In this regard there were instructions issued from the Ministry of Labour & Employment Government of India vide DO No. M-11011/08/2020-Media dated 20.03.2020, which cannot remained un-noticed to be implemented in such precarious situation.

> **"The World is facing a catastrophic situation due to outbreak of COVID- 19 and in order to combat this challenge, coordinated joint efforts of all Sections of the Society is required. In view of the above, there may be incidence that employee's/worker's services are dispensed with on this pretext or the employee/worker are forced to go on leave without wage/salaries. In the backdrop of such challenging situation, all the Employers of Public/Private Establishments may be advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period. Further, if the place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty. The termination of employee from the job or reduction in wages in this scenario would further deepen the crises and will not only weaken the financial condition of the employee but also hamper their morale to combat their fight with this epidemic, In view of this, you are requested to issue necessary Advisory to the Employers/Owners of all the establishments in the State.**

25. Therefore, keeping in view the aforesaid notification the transfer and thereafter termination of the services of the petitioner that too during COVID-19 Pandemic, is illegal and unjustified

26. In order to plea of abandonment, there is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume his duties. From the record, it is also quite clear that before terminating the services of the petitioner neither he had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned his job but there is no such material which could go to show that any notice had been issued to him for resuming his duties. *It has been held by the* ***Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub that:***

> ***"When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."***
>
> *It was further held that :*
>
> ***"The principles of natural justice were required to be followed by giving opportunity to the workman.***
>
> ***"The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."***

27. Thus, Having regard to the law laid down by the Hon'ble Apex Court (supra) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that she had not abandoned the job at her own.

28. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

29. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

30. From the persual of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but he was not allowed to join his duties. Hence, the case of the petitioner clearly falls under the defination of retrenchment. It is also admitted position

on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisons of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act as no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under section 25-B of the Act. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

31. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

32. For the foregoing reason, this Court/Tribunal comes to an inescapable conclusion that the petitioner had not abandoned his job at his own rather his services have been termianted by the respondent on account of alleged transfer and that too during the period of Pandemic COVID-19, which to totally illegal and unjustified. The petitioner is held entitled for re-instatement in service with seniority and continuity. Keeping in view the peculiar facts and circumstances of the present case, the petitioner is also held entitled for back-wages @ 25% to be counted from the date of his transfer/termination, which is held to be unjust illegal and malafide. The issue in question is decided accordingly.

ISSUE NO. 2.

33. In order to prove this issue, no evidence has been led by the respondent which could go to show that as to how the present petition is neither competant nor maintainable especially when the same was filed pursuant to the reference received from the appropriate government. I find nothing wrong with the present petition, which is perfectably maintainable. Accordingly, the issue in question is answered against the respondent company.

RELIEF

34. As a squitter, to my foregoing discussion and findings on issues no. 1 &2 above, the claim filed by the petitioner succeeds and is hereby allowed.

35. Resultantly, the respondent company is directed to re-engage the petitioner on the same post and place i.e at Dharampur, Himachal Pradesh with seniority and continuity along-with back-wages @ 25% to be counted from the date of his illegal

transfer/retrenchment. The awarded back wages shall be paid within a period of two months from the date of award i.e. 1.7.2023, failing which the same shall carry interest @ 9% per annum. The reference sent by the appropriate government is answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 257 of 2021

Instituted on : 13-12-2021

Decided on : 01-07-2023

Avinash s/o Shri Jamna Dass, r/o Village Kathla, P.O. Rouri. Tehsil Kasauli, District Solan, H.P. . .*Petitioner.*

VERSUS

The Occupier/Factory Manager, M/s R.B. Knit Exports, Village Kathla, P.O. Rauri, Sabathu Road Dharampur, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J. C. Bhardwaj, AR

For the respondent : Shri R. K. Verma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 30.06.2021, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, which reads as under:

"Whether termination of the services of Sh. Avinash s/o Shri Jamna Dass, r/o Village Kathla, P.O. Rouri, Tehsil Kasauli, District Solan, H.P. w.e.f. 24.03.2020 by the management i.e. Occupier/Factory Manager, M/s R.B. Knit Exports, Village Kathla P.O. Rauri, Sabathu Road Dharampur, District Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of service, back wages, and other consequential service

benefits and compensation to the above aggrieved workman is entitled to from the above stated employer/ management?"

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged in the services of the respondent in the month of March 1997 and his services were confirmed on 01.06.1998. The petitioner had worked continuously with the respondent company till his illegal and oral termination/retrenchment from service by the respondent on 24.03.2020. The petitioner has worked for more than 240 working days in a calendar year. The services of the junior workers were retained by the respondent. The company was declared closed due to Pandemic COVID-19 (Corona Virus) and it was opened on 20.04.2020. When, the petitioner went to join his duties, he was not allowed to join his duties and was asked to report for duty after expiring of few days and thereafter the petitioner had again visited the company premises to resume his duties after 15 days on 05.05.2020, but he was again asked to wait for some. The petitioner was not allowed to join his duties and his services were terminated without issuing any notice, paying retrenchment compensation and in non-compliance of the provisions of section 25-F of the Act. The said termination order of terminating the services of the petitioner are absolutely null and void.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

"Now, it is therefore prayed that your honor may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect i.e from the date of his illegal removal/ termination on 24.03.2020 with full back-wages, seniority and other consequential service benefits throughout and with costs."

4. The lis was resisted and contested by filing written reply to the statement of claim, on behalf of respondent company, on inter-alia preliminary objections of maintainability, estoppel, ulterior motive, suppression of material facts and not come to the Court with clean hands.

5. On merits, it is denied that the services of the petitioner were terminated/retrenched on 24.03.2020 without assigning any cogent reason. It is further denied that the company was closed due to COVID-19. It is submitted that the petitioner was transferred from R.B. Knit Exports, Solan to R.B. Knit Exports, 415 Industrial Area- A, Ludhiana, Punjab as per his experience and work profile vide transfer order dated 10.01.2020. It is further submitted that the allegations levelled in the petition in totally false and frivolous. It is denied that no fair and proper enquiry had been conducted against the petitioner. Since, the date of his transfer, the petitioner had not joined at the transferred place and refused to join at transferred place. The services of the petitioner were never terminated/retrenched. It is therefore, prayed that claim petition of the petition may please be dismissed with special cost being devoid of merit, keeping in view the detailed submissions made hereinabove in the interest of justice.

6. No rejoinder came to be filed by the petitioner.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which is as under:

1. Whether the termination of the services of the petitioner by the respondent management w.e.f. 24.03.2020 without complying the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? If yes, what relief the petitioner is entitled to? . .*OPP.*

2. Whether the present claim petition is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed. Both the parties adduced oral and documentary evidence.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1	:	Yes. Entitled for reinstatement in service with seniority and continuity along-with back-wages @ 25% to be counted from the date of termination.
Issue no. 2	:	No
Relief.	:	Reference is answered in affirmative as per operative part of award

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn-in-affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition in verbatim. He has also tendered into evidence the representation made by him Mark PX-1.

12. In the cross-examination, he has stated that he joined the respondent company in the year 1996. He admitted that he had not mentioned about his transfer in the demand notice. Volunteered that no transfer letter was issued to him. He denied that he was asked telephonically by the company to join at the transferred place.

13. To refute the allegations of the petitioner, the respondent had examined Shri Amar Deep as (RW-1), who has tendered into evidence his sworn-in-affidavit (RW-1/A), wherein he has deposed that he was working as Chief Admin. Officer with the respondent company and transfer letter dated 10.01.2020 was issued by him but the petitioner refused to accept the same. The petitioner despite receiving the transfer letter through registered letter failed to join his duties at transferred place.

14. In cross-examination, he admitted that the Certified Standing Orders are applicable in the company. He denied that there is no provision of transfer in Standing Orders. He denied that the services of the petitioner were terminated during COVID-19 period. He denied that no letter was issued to the petitioner for wilful absence and resuming the work. He admitted that neither chargesheet was issued nor enquiry was conducted. He admitted that no compensation was paid to the petitioner by him.

15. Another witness Shri Ram Kumar, had stepped into the witness box as (RW-2) and tendered into evidence his sworn-in affidavit (RW-2/A), wherein he has reiterated almost all the averments as made thereto in the reply. He also tendered into evidence authority letter (R-4) and experience certificate (R-5).

16. When cross-examined, he admitted that the Factory gate was closed during COVID-19 pandemic. He further admitted that the Factory was opened on the instruction of Government. He denied that the petitioner had come to the factory on 04.04.2020 to join his duties. He admitted that the salary of the petitioner for the month of March, 2020 was paid to him in the month of April, 2020. He admitted that the petitioner was transferred on 10.01.2020. He feigned ignorance that the presence of the petitioner was marked at Dharampur till 24.03.2020. He admitted that the petitioner was not taken back to the work after 25.03.2020. He admitted that no letter regarding absence was given to the petitioner. He also admitted that neither chargesheet nor show cause notice was issued and no enquiry was conducted. He admitted that certified standing orders are applicable in the company.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Shri J.C Bhardwaj, AR for the petitioner has contended with all vehemence that the services of the petitioner had been terminated orally without following any procedure and that too during the period of COVID-19 pandemic. The said termination is illegal, hence, the petitioner deserves to be reinstated along-with all consequential service benefits including full back-wages.

19. Per contra, Shri R.K. Verma, Ld. Counsel for the respondent company has strenuously argued that the services of the petitioner were never terminated by the respondent company. The services of the petitioner were transferred from Dharampur to Ludhiana (Punjab) but he had failed to join his duties at the transferred place. He further argued that the petitioner has miserably failed to prove his termination from the service. The petitioner had himself abandoned the job. He had concealed the material facts from this Court/Tribunal. Ld. Counsel argued that it is a simple case of transfer and not termination. Similarly, the case of abandonment and not retrenchment. It is, therefore, prayed that the claim filed by the petitioner may kindly be dismissed with costs.

20. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Admittedly, the services of the petitioner were engaged by the respondent during the month of March, 1996 and he had worked continuously till 24.03.2020. It is also not in dispute that the petitioner had completed more than 240 working days in each calendar year. It is also an admitted position on record that at the time of termination/retrenchment of the petitioner no notice or chargesheet or retrenchment compensation was ever paid to the petitioner. Since, the petitioner had worked continuously with the respondent company from March, 1996 to March 2020, therefore it stands clearly established on record that the petitioner had worked for more than 240 working days in the preceding twelve calendar months from the date of termination/retrenchment.

22. The only plea raised by the respondent is that the services of the petitioner have been transferred Dharampur to Ludhiana vide transfer letter dated 10.01.2020. Similarly, letter dated 01.08.2020, has also been issued. As per the reply, it is averred that the services of the petitioner were neither terminated nor retrenched orally or otherwise by the respondent. The petitioner himself had abandoned his job by not joining at the transferred place. It is further averred that it is the case of transfer and abandonment and not the termination or retrenchment.

23. On the other hand, the case set-up from the side of the petitioner is that the factory was closed due to COVID-19 and it was opened on 20.04.2020 but the petitioner was not allowed to enter the factory premises by the management. The petitioner again went to resume his duties but was not allowed to resume his duties.

24. In the backdrop of aforesaid events, there is no speck of doubt about the fact that there was an outbreak of Pandemic Corona Virus -2019, much known as COVID-19. It is also an admitted fact that the entire country was facing the putting of lock-down right from 24.03.2020 to 08.06.2020. In this regard there were instructions issued from the Ministry of Labour & Employment Government of India vide DO No. M-11011/08/2020-Media dated 20.03.2020, which cannot remained un-noticed to be implemented in such precarious situation.

> **"The World is facing a catastrophic situation due to outbreak of COVID- 19 and in order to combat this challenge, coordinated joint efforts of all Sections of the Society is required. In view of the above, there may be incidence that employee's/worker's services are dispensed with on this pretext or the employee/worker are forced to go on leave without wage/salaries. In the backdrop of such challenging situation, all the Employers of Public/Private Establishments may be advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period. Further, if the place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty. The termination of employee from the job or reduction in wages in this scenario would further deepen the crises and will not only weaken the financial condition of the employee but also hamper their morale to combat their fight with this epidemic, In view of this, you are requested to issue necessary Advisory to the Employers/Owners of all the establishments in the State.**

25. Therefore, keeping inview the aforesaid notification the transfer and thereafter termination of the services of the petitioner that too during COVID-19 Pandemic, is illegal and unjustified

26. In order to plea of abandonment, there is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume his duties. From the record, it is also quite clear that before terminating the services of the petitioner neither he had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned his job but there is no such material which could go to show that any notice had been issued to him for resuming his duties. *It has been held by the* ***Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub that:***

> ***"When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."***
>
> *It was further held that :*
>
> ***"The principles of natural justice were required to be followed by giving opportunity to the workman.***
>
> ***"The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural***

justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

27. Thus, Having regard to the law laid down by the Hon'ble Apex Court (supra) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that she had not abandoned the job at her own.

28. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

29. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

30. From the persual of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but he was not allowed to join his duties. Hence, the case of the petitioner clearly falls under the defination of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisons of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act as no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under section 25-B of the Act. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

31. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

32. For the foregoing reason, this Court/Tribunal comes to an inescapable conclusion that the petitioner had not abandoned his job at his own rather his services have been termianted by the respondent on account of alleged transfer and that too during the period of Pandemic COVID-19, which to totally illegal and unjustified. The petitioner is held entitled for re-instatement in service with seniority and continuity. Keeping in view the peculiar facts and circumstances of the present case, the petitioner is also held entitled for back-wages @ 25% to be counted from the date of his transfer/termination, which is held to be unjust illegal and malafide. The issue in question is decided accordingly.

ISSUE NO. 2

33. In order to prove this issue, no evidence has been led by the respondent which could go to show that as to how the present petition is neither competant nor maintainable especially when the same was filed pursuant to the reference received from the appropriate government. I find nothing wrong with the present petition, which is perfectably maintainable. Accordingly, the issue in question is answered against the respondent company.

RELIEF

34. As a squitter, to my foregoing discussion and findings on issues no. 1 &2 above, the claim filed by the petitioner succeeds and is hereby allowed.

35. Resultantly, the respondent company is directed to re-engage the petitioner on the same post and place i.e. at Dharampur, Himachal Pradesh with seniority and continuity along-with back-wages @ 25% to be counted from the date of his illegal transfer/retrenchment. The awarded back wages shall be paid within a period of two months from the date of award i.e. 1.7.2023, failing which the same shall carry interest @ 9% per annum. The reference sent by the appropriate government is answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number	:	258 of 2021
Instituted on	:	13-12-2021
Decided on	:	01-07-2023

Sant Ram s/o Shri Kalu Ram, r/o Village Dangivari, P.O. Rauri, Tehsil Kasauli, District Solan, H.P. . .*Petitioner.*

VERSUS

The Occupier/Factory Manager M/s R. B. Knit Exports, Village Kathla, P.O. Rauri, Sabathu Road Dharampur, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J. C. Bhardwaj, AR

For the respondent : Shri R. K. Verma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 30.06.2021, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, which reads as under:

> **"Whether termination of the services of Sh. Sant Ram s/o Shri Kalu Ram r/o Village Dangivari, P.O. Rauri, Tehsil Kasauli, District Solan, HP w.e.f. 24.03.2020 by the Management i.e. Occupier/Factory Manager, M/s R.B. Knit Exports, Village Kathla, P.O. Rauri, Sabathu Road Dharampur, District Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of service, back wages, and other consequential service benefits and compensation to the above aggrieved workman is entitled to from the above stated employer/ management?"**

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged in the services of the respondent during the month of May, 1997, and his services were confirmed during the month of May, 1997. The petitioner had worked continuously with the respondent company till his illegal and oral termination/retrenchment from service by the respondent on 24.03.2020. The petitioner has worked for more than 240 working days in a calendar year. The services of the junior workers were retained by the respondent. The company was declared closed due to Pandemic COVID-19 (Corona Virus) and it was opened on 20.04.2020. When, the petitioner went to join his duties, he was not allowed to join his duties and was asked to report for duty after expiring of few days and thereafter the petitioner had again visited the company premises to resume his duties after 15 days on 05.05.2020, but he was again asked to wait for some. The petitioner was not allowed to join his duties and his services were terminated without issuing any notice, paying retrenchment compensation and in non-compliance of the provisions of section 25-F of the Act. The said termination order of terminating the services of the petitioner are absolutely null and void.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

> **"Now, it is therefore prayed that your honor may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect i.e from the date of his illegal removal/ termination on 24.03.2020 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by filing written reply to the statement of claim, on behalf of respondent company, on inter-alia preliminary objections of maintainability, estoppel, ulterior motive, suppression of material facts and not come to the Court with clean hands.

5. On merits, it is denied that the services of the petitioner were terminated/retrenched on 24.03.2020 without assigning any cogent reason. It is further denied that the company was closed due to COVID-19. It is submitted that the petitioner was transferred from R.B. Knit Exports, Solan to R.B. Knit Exports, 415 Industrial Area- A, Ludhiana, Punjab as per his experience and work profile vide transfer order dated 10.01.2020. It is further submitted that the allegations levelled in the petition in totally false and frivolous. It is denied that no fair and proper enquiry had been conducted against the petitioner. Since, the date of his transfer, the petitioner had not joined at the transferred place and refused to join at transferred place. The services of the petitioner were never terminated/retrenched. It is therefore, prayed that claim petition of the petition may please be dismissed with special cost being devoid of merit, keeping in view the detailed submissions made hereinabove in the interest of justice.

6. No rejoinder came to be filed by the petitioner.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which is as under:

1. Whether the termination of the services of the petitioner by the respondent management w.e.f. 24.03.2020 without complying the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? If yes, what relief the petitioner is entitled to? . .*OPP.*

2. Whether the present claim petition is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed. Both the parties adduced oral and documentary evidence.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1 : Yes. Entitled for reinstatement in service with seniority and continuity along-with back-wages @ 25% to be counted from the date of termination.

Issue no. 2 : No

Relief : Reference is answered in affirmative as per operative part of award

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn-in-affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition in verbatim. He has also tendered into evidence the representation made by him Mark PX-1.

12. In the cross-examination, he has stated that he joined the respondent company in the month of May, 1997 and the appointment letter Mark RX-1 was issued in 1999. He admitted that he had not mentioned about his transfer in the demand notice. Volunteered that no transfer letter was issued to him. He denied that he was asked telephonically by the company to join at the transferred place.

13. To refute the allegations of the petitioner, the respondent had examined Shri Amar Deep as (RW-1), who has tendered into evidence his sworn-in-affidavit (RW-1/A), wherein he has deposed that he was working as Chief Admin. Officer with the respondent company and transfer letter dated 10.01.2020 was issued by him but the petitioner refused to accept the same. The petitioner despite receiving the transfer letter through registered letter failed to join his duties at transferred place. He also tendered in evidence transfer letter (R-2) and reminder (R-3).

14. In cross-examination, he admitted that the Certified Standing Orders are applicable in the company. He denied that there is no provision of transfer in Standing Orders. He denied that the services of the petitioner were terminated during COVID-19 period. He denied that no letter was issued to the petitioner for wilful absence and resuming the work. He admitted that neither chargesheet was issued nor enquiry was conducted. He admitted that no compensation was paid to the petitioner by him.

15. Another witness Shri Ram Kumar, had stepped into the witness box as (RW-2) and tendered into evidence his sworn-in affidavit (RW-2/A), wherein he has reiterated almost all the averments as made thereto in the reply. He also tendered into evidence authority letter (R-4) and experience certificate (R-5).

16. When cross-examined, he admitted that the Factory gate was closed during COVID-19 pandemic. He further admitted that the Factory was opened on the instruction of Government. He denied that the petitioner had come to the factory on 04.04.2020 to join his duties. He admitted that the salary of the petitioner for the month of March, 2020 was paid to him in the month of April, 2020. He admitted that the petitioner was transferred on 10.01.2020. He feigned ignorance that the presence of the petitioner was marked at Dharampur till 24.03.2020. He admitted that the petitioner was not taken back to the work after 25.03.2020. He admitted that no letter regarding absence was given to the petitioner. He also admitted that neither chargesheet nor show cause notice was issued and no enquiry was conducted. He admitted that certified standing orders are applicable in the company.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the services of the petitioner had been terminated orally without following any procedure and that too during the period of COVID-19 pandemic. The said termination is illegal, hence, the petitioner deserves to be reinstated along-with all consequential service benefits including full back-wages.

19. Per contra, Shri R. K. Verma, Ld. Counsel for the respondent company has strenuously argued that the services of the petitioner were never terminated by the respondent company. The services of the petitioner were transferred from Dharampur to Ludhiana (Punjab) but he had failed

to join his duties at the transferred place. He further argued that the petitioner has miserably failed to prove his termination from the service. The petitioner had himself abandoned the job. He had concealed the material facts from this Court/Tribunal. Ld. Counsel argued that it is a simple case of transfer and not termination. Similarly, the case of abandonment and not retrenchment. It is, therefore, prayed that the claim filed by the petitioner may kindly be dismissed with costs.

20. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Admittedly, the services of the petitioner were engaged by the respondent during the month of May, 1997 and he had worked continuously till 24.03.2020. It is also not in dispute that the petitioner had completed more than 240 working days in each calendar year. It is also an admitted position on record that at the time of termination/retrenchment of the petitioner no notice or chargesheet or retrenchment compensation was ever paid to the petitioner. Since, the petitioner had worked continuously with the respondent company from May, 1997 to March 2020, therefore, it stands clearly established on record that the petitioner had worked for more than 240 working days in the preceding twelve calendar months from the date of termination/retrenchment.

22. The only plea raised by the respondent is that the services of the petitioner have been transferred Dharampur to Ludhiana vide transfer letter dated 10.01.2020. Similarly, letter dated 01.08.2020, has also been issued. As per the reply, it is averred that the services of the petitioner were neither terminated nor retrenched orally or otherwise by the respondent. The petitioner himself had abandoned his job by not reporting for duties at the transferred place. It is further averred that it is the case of transfer and abandonment and not the termination or retrenchment.

23. On the other hand, the case set-up from the side of the petitioner is that the factory was closed due to COVID-19 and it was opened on 20.04.2020 but the petitioner was not allowed to enter the factory premises by the management. The petitioner again went to resume his duties but was not allowed to resume his duties.

24. In the backdrop of aforesaid events, there is no speck of doubt about the fact that there was an outbreak of Pandemic Corona Virus -2019, much known as COVID-19. It is also an admitted fact that the entire country was facing the putting of lock-down right from 24.03.2020 to 08.06.2020. In this regard there were instructions issued from the Ministry of Labour & Employment Government of India vide DO No. M-11011/08/2020-Media dated 20.03.2020, which cannot remained un-noticed to be implemented in such precarious situation.

> **"The World is facing a catastrophic situation due to outbreak of COVID- 19 and in order to combat this challenge, coordinated joint efforts of all Sections of the Society is required. In view of the above, there may be incidence that employee's/worker's services are dispensed with on this pretext or the employee/worker are forced to go on leave without wage/salaries. In the backdrop of such challenging situation, all the Employers of Public/Private Establishments may be advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period. Further, if the place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty. The termination of employee from the job or reduction in wages in this scenario would further deepen the crises and will not only weaken the financial condition of the employee but also hamper their morale to combat their fight with this epidemic, In view of this, you are requested to**

issue necessary Advisory to the Employers/Owners of all the establishments in the State.

25. Therefore, keeping inview the aforesaid notification the transfer and thereafter termination of the services of the petitioner that too during COVID-19 Pandemic, is illegal and unjustified

26. In order to plea of abandonment, there is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume his duties. From the record, it is also quite clear that before terminating the services of the petitioner neither he had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned his job but there is no such material which could go to show that any notice had been issued to him for resuming his duties. *It has been held by the* ***Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub that:***

"When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."

It was further held that :

"The principles of natural justice were required to be followed by giving opportunity to the workman.

"The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

27. Thus, Having regard to the law laid down by the Hon'ble Apex Court (supra) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that she had not abandoned the job at her own.

28. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

29. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

30. From the persual of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but he was not allowed to join his duties. Hence, the case of the petitioner clearly falls under the defination of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisons of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act as no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under section 25-B of the Act. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

31. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

32. For the foregoing reason, this Court/Tribunal comes to an inescapable conclusion that the petitioner had not abandoned his job at his own rather his services have been termianted by the respondent on account of alleged transfer and that too during the period of Pandemic COVID-19, which to totally illegal and unjustified. The petitioner is held entitled for re-instatement in service with seniority and continuity. Keeping in view the peculiar facts and circumstances of the present case, the petitioner is also held entitled for back-wages @ 25% to be counted from the date of his transfer/termination, which is held to be unjust illegal and malafide. The issue in question is decided accordingly.

ISSUE NO.2

33. In order to prove this issue, no evidence has been led by the respondent which could go to show that as to how the present petition is neither competant nor maintainable especially when the same was filed pursuant to the reference received from the appropriate government. I find nothing wrong with the present petition, which is perfectably maintainable. Accordingly, the issue in question is answered against the respondent company.

RELIEF

34. As a squitter, to my foregoing discussion and findings on issues no. 1 &2 above, the claim filed by the petitioner succeeds and is hereby allowed.

35. Resultantly, the respondent company is directed to re-engage the petitioner on the same post and place i.e at Dharampur, Himachal Pradesh with seniority and continuity along-with back-wages @ 25% to be counted from the date of his illegal transfer/retrenchment. The awarded back wages shall be paid within a period of two months from the date of award i.e. 1.7.2023, failing which the same shall carry interest @ 9% per annum. The reference sent by the appropriate government is answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 07 of 2022

Instituted on : 01-01-2022

Decided on : 01-07-2023

Devinder Kumar s/o Shri Mathu Ram, r/o Village Radiyan Deovthi, P.O. & Tehsil Kasauli, District Solan, H.P. . .*Petitioner.*

VERSUS

The Occupier/Factory Manager, M/s R. B. Knit Exports, Village Kathla, P.O. Rauri, Sabathu Road Dharampur, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J.C. Bhardwaj, AR

For the respondent : Shri R.K. Verma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 30.06.2021, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, which reads as under:

"Whether termination of the services of Sh. Devinder Kumar s/o Shri Mathu Ram, r/o Village Radiyan Deovthi, P.O. & Tehsil Kasauli, District Solan, H.P. w.e.f. 24.03.2020 by the management i.e. Occupier/Factory Manager, M/s R.B. Knit Exports, Village Kathla, P.O. Rauri, Sabathu Road Dharampur, District Solan H.P., without

complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of service, back wages, and other consequential service benefits and compensation to the above aggrieved workman is entitled to from the above stated employer/ management?"

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged in the services of the respondent in May, 2013, on monthly salary of ₹7595/- and his services were confirmed on 01.11.2014. The petitioner had worked continuously with the respondent company till his illegal and oral termination/retrenchment from service by the respondent on 24.03.2020. The petitioner has worked for more than 240 working days in a calendar year. The services of the junior workers were retained by the respondent. The company was declared closed due to Pandemic COVID-19 (Corona Virus) and it was opened on 20.04.2020. When, the petitioner went to join his duties, he was not allowed to join his duties and was asked to report for duty after expiring of few days and thereafter the petitioner had again visited the company premises to resume his duties after 15 days on 05.05.2020, but he was again asked to wait for some. The petitioner was not allowed to join his duties and his services were terminated without issuing any notice, paying retrenchment compensation and in non-compliance of the provisions of section 25-F of the Act. The said termination order of terminating the services of the petitioner are absolutely null and void.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

"Now, it is therefore prayed that your honor may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect i.e. from the date of his illegal removal/ termination on 24.03.2020 with full back-wages, seniority and other consequential service benefits throughout and with costs."

4. The lis was resisted and contested by filing written reply to the statement of claim, on behalf of respondent company, on inter-alia preliminary objections of maintainability, estoppel, ulterior motive, suppression of material facts and not come to the Court with clean hands.

5. On merits, it is denied that the services of the petitioner were terminated/retrenched on 24.03.2020 without assigning any cogent reason. It is further denied that the company was closed due to COVID-19. It is submitted that the petitioner was transferred from R.B. Knit Exports, Solan to R.B. Knit Exports, 415 Industrial Area- A, Ludhiana, Punjab as per his experience and work profile vide transfer order dated 10.01.2020. It is further submitted that the allegations levelled in the petition in totally false and frivolous. It is denied that no fair and proper enquiry had been conducted against the petitioner. Since, the date of his transfer, the petitioner had not joined at the transferred place and refused to join at transferred place. The services of the petitioner were never terminated/retrenched. It is therefore, prayed that claim petition of the petition may please be dismissed with special cost being devoid of merit, keeping in view the detailed submissions made hereinabove in the interest of justice.

6. No rejoinder came to be filed by the petitioner.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which is as under:

1. Whether the termination of the services of the petitioner by the respondent management w.e.f. 24.03.2020 without complying the provisions of the Industrial

Disputes Act, 1947 is illegal and unjustified? If yes, what relief the petitioner is entitled to? . .*OPP.*

2. Whether the present claim petition is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed. Both the parties adduced oral and documentary evidence.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	:	Yes. Entitled for reinstatement in service with seniority and continuity along-with back-wages @ 25% to be counted from the date of termination.
Issue no. 2	:	No
Relief	:	Reference is answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn-in-affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition in verbatim. He has also tendered into evidence the representation made by him Mark PX-1.

12. In the cross-examination, he has stated that he joined the respondent company in the year 2013 and the appointment letter Mark RX-1 was issued in 2014. He admitted that he had not mentioned about his transfer in the demand notice. Volunteered that no transfer letter was issued to him. He denied that he was asked telephonically by the company to join at the transferred place.

13. To refute the allegations of the petitioner, the respondent had examined Shri Amar Deep as (RW-1), who has tendered into evidence his sworn-in-affidavit (RW-1/A), wherein he has deposed that he was working as Chief Admin Officer with the respondent company and transfer letter dated 10.01.2020 was issued by him but the petitioner refused to accept the same. The petitioner despite receiving the transfer letter through registered letter failed to join his duties at transferred place.

14. In cross-examination, he admitted that the Certified Standing Orders are applicable in the company. He denied that there is no provision of transfer in Standing Orders. He denied that the services of the petitioner were terminated during COVID-19 period. He denied that no letter was issued to the petitioner for wilful absence and resuming the work. He admitted that neither

chargesheet was issued nor enquiry was conducted. He admitted that no compensation was paid to the petitioner by him.

15. Another witness Shri Ram Kumar, had stepped into the witness box as (RW-2) and tendered into evidence his sworn-in affidavit (RW-2/A), wherein he has reiterated almost all the averments as made thereto in the reply. He also tendered into evidence authority letter (R-4) and experience certificate (R-5).

16. When cross-examined, he admitted that the Factory gate was closed during COVID-19 pandemic. He further admitted that the Factory was opened on the instruction of Government. He denied that the petitioner had come to the factory on 04.04.2020 to join his duties. He admitted that the salary of the petitioner for the month of March, 2020 was paid to him in the month of April, 2020. He admitted that the petitioner was transferred on 10.01.2020. He feigned ignorance that the presence of the petitioner was marked at Dharampur till 24.03.2020. He admitted that the petitioner was not taken back to the work after 25.03.2020. He admitted that no letter regarding absence was given to the petitioner. He also admitted that neither chargesheet nor show cause notice was issued and no enquiry was conducted. He admitted that certified standing orders are applicable in the company.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the services of the petitioner had been terminated orally without following any procedure and that too during the period of COVID-19 pandemic. The said termination is illegal, hence, the petitioner deserves to be reinstated along-with all consequential service benefits including full back-wages.

19. Per contra, Shri R. K. Verma, Ld. Counsel for the respondent company has strenuously argued that the services of the petitioner were never terminated by the respondent company. The services of the petitioner were transferred from Dharampur to Ludhiana (Punjab) but he had failed to join his duties at the transferred place. He further argued that the petitioner has miserably failed to prove his termination from the service. The petitioner had himself abandoned the job. He had concealed the material facts from this Court/Tribunal. Ld. Counsel argued that it is a simple case of transfer and not termination. Similarly, the case of abandonment and not retrenchment. It is, therefore, prayed that the claim filed by the petitioner may kindly be dismissed with costs.

20. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Admittedly, the services of the petitioner were engaged by the respondent during the month of May, 2013 and he had worked continuously till 24.03.2020. It is also not in dispute that the petitioner had completed more than 240 working days in each calendar year. It is also an admitted position on record that at the time of termination/retrenchment of the petitioner no notice or chargesheet or retrenchment compensation was ever paid to the petitioner. Since, the petitioner had worked continuously with the respondent company from April 2013 to March 2020, therefore it stands clearly established on record that the petitioner had worked for more than 240 working days in the preceding twelve calendar months from the date of termination/retrenchment.

22. The only plea raised by the respondent is that the services of the petitioner have been transferred Dharampur to Ludhiana vide transfer letter dated 10.01.2020. Similarly, letter dated 01.08.2020, has also been issued. As per the reply, it is averred that the services of the petitioner

were neither terminated nor retrenched orally or otherwise by the respondent. The petitioner himself had abandoned his job by not joining at the transferred place. It is further averred that it is the case of transfer and abandonment and not the termination or retrenchment.

23. On the other hand, the case set-up from the side of the petitioner is that the factory was closed due to COVID-19 and it was opened on 20.04.2020 but the petitioner was not allowed to enter the factory premises by the management. The petitioner again went to resume his duties but was not allowed to resume his duties.

24. In the backdrop of aforesaid events, there is no speck of doubt about the fact that there was an outbreak of Pandemic Corona Virus-2019, much known as COVID-19. It is also an admitted fact that the entire country was facing the putting of lock-down right from 24.03.2020 to 08.06.2020. In this regard there were instructions issued from the Ministry of Labour & Employment Government of India vide DO No. M-11011/08/2020-Media dated 20.03.2020, which cannot remained un-noticed to be implemented in such precarious situation.

> **"The world is facing a catastrophic situation due to outbreak of COVID- 19 and in order to combat this challenge, coordinated joint efforts of all Sections of the Society is required. In view of the above, there may be incidence that employee's/worker's services are dispensed with on this pretext or the employee/worker are forced to go on leave without wage/salaries. In the backdrop of such challenging situation, all the Employers of Public/Private Establishments may be advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period. Further, if the place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty. The termination of employee from the job or reduction in wages in this scenario would further deepen the crises and will not only weaken the financial condition of the employee but also hamper their morale to combat their fight with this epidemic, In view of this, you are requested to issue necessary Advisory to the Employers/Owners of all the establishments in the State.**

25. Therefore, keeping in view the aforesaid notification the transfer and thereafter termination of the services of the petitioner that too during COVID-19 Pandemic, is illegal and unjustified

26. In order to plea of abandonment, there is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume his duties. From the record, it is also quite clear that before terminating the services of the petitioner neither he had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned his job but there is no such material which could go to show that any notice had been issued to him for resuming his duties. *It has been held by the* ***Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub that:***

> ***"When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."***

It was further held that :

"The principles of natural justice were required to be followed by giving opportunity to the workman.

"The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

27. Thus, Having regard to the law laid down by the Hon'ble Apex Court (supra) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that she had not abandoned the job at her own.

28. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

29. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

30. From the persual of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but he was not allowed to join his duties. Hence, the case of the petitioner clearly falls under the defination of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisons of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act as no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under

section 25-B of the Act. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

31. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

32. For the foregoing reason, this Court/Tribunal comes to an inescapable conclusion that the petitioner had not abandoned his job at his own rather his services have been termianted by the respondent on account of alleged transfer and that too during the period of Pandemic COVID-19, which to totally illegal and unjustified. The petitioner is held entitled for re-instatement in service with seniority and continuity. Keeping in view the peculiar facts and circumstances of the present case, the petitioner is also held entitled for back-wages @ 25% to be counted from the date of his transfer/termination, which is held to be unjust illegal and malafide. The issue in question is decided accordingly.

ISSUE NO.2

33. In order to prove this issue, no evidence has been led by the respondent which could go to show that as to how the present petition is neither competant nor maintainable especially when the same was filed pursuant to the reference received from the appropriate government. I find nothing wrong with the present petition, which is perfectably maintainable. Accordingly, the issue in question is answered against the respondent company.

RELIEF

34. As a squitter, to my foregoing discussion and findings on issues no. 1 & 2 above, the claim filed by the petitioner succeeds and is hereby allowed.

35. Resultantly, the respondent company is directed to re-engage the petitioner on the same post and place i.e. at Dharampur, Himachal Pradesh with seniority and continuity along-with back-wages @ 25% to be counted from the date of his illegal transfer/retrenchment. The awarded back wages shall be paid within a period of two months from the date of award i.e. 1.7.2023, failing which the same shall carry interest @ 9% per annum. The reference sent by the appropriate government is answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 08 of 2022

Instituted on : 01-01-2022

Decided on : 01-07-2023

Jeet Ram s/o Shri Shankar Dass, r/o Village Kanu, P.O. Rouri, Tehsil Kasauli, District Solan, H.P. . .*Petitioner.*

VERSUS

The Occupier/Factory Manager M/s R.B Knit Exports Village Kathla, P.O. Rauri, Sabathu Road Dharampur, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri J.C. Bhardwaj, AR.

For the respondent : Shri R. K. Verma, Advocate.

AWARD

The following reference petition has been received from the Appropriate Government vide notification dated 30.06.2021, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, which reads as under:

> **"Whether termination of the services of Sh. Jeet Ram s/o Shri Shankar Dass, r/o Village Kanu, P.O. Rouri, Tehsil Kasauli, District Solan, HP w.e.f. 24.03.2020 by the management i.e. Occupier/Factory Manager M/s R. B. Knit Exports Village Kathla PO Rauri, Sabathu Road Dharampur, District Solan H.P., without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of service, back wages, and other consequential service benefits and compensation to the above aggrieved workman is entitled to from the above stated employer/ management?"**

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged in the services of the respondent in the month of June, 1997 and his services were confirmed on 01.06.1998. The petitioner had worked continuously with the respondent company till his illegal and oral termination/retrenchment from service by the respondent on 24.03.2020. The petitioner has worked for more than 240 working days in a calendar year. The services of the junior workers were retained by the respondent. The company was declared closed due to Pandemic COVID-19 (Corona Virus) and it was opened on 20.04.2020. When, the petitioner went to join his duties, he was not allowed to join his duties and was asked to report for duty after expiring of few days and thereafter the petitioner had again visited the company premises to resume his duties after 15 days on 05.05.2020, but he was again asked to wait for some. The petitioner was not allowed to join his duties and his services were terminated without issuing any notice, paying retrenchment compensation and in non-compliance of the provisions of section 25-F of the Act. The said termination order of terminating the services of the petitioner are absolutely null and void.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

> **"Now, it is therefore prayed that your honor may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect i.e. from the date of his illegal removal/ termination on 24.03.2020 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by filing written reply to the statement of claim, on behalf of respondent company, on *inter-alia* preliminary objections of maintainability, estoppel, ulterior motive, suppression of material facts and not come to the Court with clean hands.

5. On merits, it is denied that the services of the petitioner were terminated/retrenched on 24.03.2020 without assigning any cogent reason. It is further denied that the company was closed due to COVID-19. It is submitted that the petitioner was transferred from R.B Knit Exports, Solan to R.B Knit Exports, 415 Industrial Area- A, Ludhiana, Punjab as per his experience and work profile vide transfer order dated 10.01.2020. It is further submitted that the allegations levelled in the petition in totally false and frivolous. It is denied that no fair and proper enquiry had been conducted against the petitioner. Since, the date of his transfer, the petitioner had not joined at the transferred place and refused to join at transferred place. The services of the petitioner were never terminated/retrenched. It is therefore, prayed that claim petition of the petition may please be dismissed with special cost being devoid of merit, keeping in view the detailed submissions made hereinabove in the interest of justice.

6. No rejoinder came to be filed by the petitioner.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which is as under:

1. Whether the termination of the services of the petitioner by the respondent management w.e.f. 24.03.2020 without complying the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? If yes, what relief the petitioner is entitled to? . .*OPP.*

2. Whether the present claim petition is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed. Both the parties adduced oral and documentary evidence.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	:	Yes. Entitled for reinstatement in service with seniority and continuity along-with back-wages @ 25% to be counted from the date of termination.
Issue no.2	:	No
Relief	:	Reference is answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn-in-affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition in verbatim. He has also tendered into evidence the representation made by him Mark PX-1.

12. In the cross-examination, he has stated that he joined the respondent company in the year 1996. He admitted that he had not mentioned about his transfer in the demand notice. Volunteered that no transfer letter was issued to him. He denied that he was asked telephonically by the company to join at the transferred place.

13. To refute the allegations of the petitioner, the respondent had examined Shri Amar Deep as (RW-1), who has tendered into evidence his sworn-in-affidavit (RW-1/A), wherein he has deposed that he was working as Chief Admin Officer with the respondent company and transfer letter dated 10.01.2020 was issued by him but the petitioner refused to accept the same. The petitioner despite receiving the transfer letter through registered letter failed to join his duties at transferred place.

14. In cross-examination, he admitted that the Certified Standing Orders are applicable in the company. He denied that there is no provision of transfer in Standing Orders. He denied that the services of the petitioner were terminated during COVID-19 period. He denied that no letter was issued to the petitioner for wilful absence and resuming the work. He admitted that neither chargesheet was issued nor enquiry was conducted. He admitted that no compensation was paid to the petitioner by him.

15. Another witness Shri Ram Kumar, had stepped into the witness box as (RW-2) and tendered into evidence his sworn-in affidavit (RW-2/A), wherein he has reiterated almost all the averments as made thereto in the reply. He also tendered into evidence authority letter (R-4) and experience certificate (R-5).

16. When cross-examined, he admitted that the Factory gate was closed during COVID-19 pandemic. He further admitted that the Factory was opened on the instruction of Government. He denied that the petitioner had come to the factory on 04.04.2020 to join his duties. He admitted that the salary of the petitioner for the month of March, 2020 was paid to him in the month of April, 2020. He admitted that the petitioner was transferred on 10.01.2020. He feigned ignorance that the presence of the petitioner was marked at Dharampur till 24.03.2020. He admitted that the petitioner was not taken back to the work after 25.03.2020. He admitted that no letter regarding absence was given to the petitioner. He also admitted that neither chargesheet nor show cause notice was issued and no enquiry was conducted. He admitted that certified standing orders are applicable in the company.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Shri J.C Bhardwaj, AR for the petitioner has contended with all vehemence that the services of the petitioner had been terminated orally without following any procedure and that too during the period of COVID-19 pandemic. The said termination is illegal, hence, the petitioner deserves to be reinstated along-with all consequential service benefits including full back-wages.

19. *Per contra,* Shri R. K. Verma, Ld. Counsel for the respondent company has strenuously argued that the services of the petitioner were never terminated by the respondent company. The services of the petitioner were transferred from Dharampur to Ludiana (Punjab) but he had failed to join his duties at the transferred place. He further argued that the petitioner has miserably failed to prove his termination from the service. The petitioner had himself abandoned the job. He had concealed the material facts from this Court/Tribunal. Ld. Counsel argued that it is a simple case of transfer and not termination. Similarly, the case of abandonment and not retrenchment. It is, therefore, prayed that the claim filed by the petitioner may kindly be dismissed with costs.

20. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Admittedly, the services of the petitioner were engaged by the respondent during the month of June 1997 and he had worked continuously till 24.03.2020. It is also not in dispute that the petitioner had completed more than 240 working days in each calendar year. It is also an admitted position on record that at the time of termination/retrenchment of the petitioner no notice or chargesheet or retrenchment compensation was ever paid to the petitioner. Since, the petitioner had worked continuously with the respondent company from June 1997 to March 2020, therefore it stands clearly established on record that the petitioner had worked for more than 240 working days in the preceding twelve calendar months from the date of termination/retrenchment.

22. The only plea raised by the respondent is that the services of the petitioner have been transferred Dharampur to Ludiana vide transfer letter dated 10.01.2020. Similarly, letter dated 01.08.2020, has also been issued. As per the reply, it is averred that the services of the petitioner were neither terminated nor retrenched orally or otherwise by the respondent. The petitioner himself had abandoned his job by not joining at the transferred place. It is further averred that it is the case of transfer and abandonment and not the termination or retrenchment.

23. On the other hand, the case set-up from the side of the petitioner is that the factory was closed due to COVID-19 and it was opened on 20.04.2020 but the petitioner was not allowed to enter the factory premises by the management. The petitioner again went to resume his duties but was not allowed to resume his duties.

24. In the backdrop of aforesaid events, there is no speck of doubt about the fact that there was an outbreak of Pandemic Corona Virus -2019, much known as COVID-19. It is also an admitted fact that the entire country was facing the putting of lock-down right from 24.03.2020 to 08.06.2020. In this regard there were instructions issued from the Ministry of Labour & Employment Government of India vide DO No. M-11011/08/2020-Media dated 20.03.2020, which cannot remained un-noticed to be implemented in such precarious situation.

> **"The World is facing a catastrophic situation due to outbreak of COVID- 19 and in order to combat this challenge, coordinated joint efforts of all Sections of the Society is required. In view of the above, there may be incidence that employee's/worker's services are dispensed with on this pretext or the employee/worker are forced to go on leave without wage/salaries. In the backdrop of such challenging situation, all the**

Employers of Public/Private Establishments may be advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period. Further, if the place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty. The termination of employee from the job or reduction in wages in this scenario would further deepen the crises and will not only weaken the financial condition of the employee but also hamper their morale to combat their fight with this epidemic, In view of this, you are requested to issue necessary Advisory to the Employers/Owners of all the establishments in the State.

25. Therefore, keeping inview the aforesaid notification the transfer and thereafter termination of the services of the petitioner that too during COVID-19 Pandemic, is illegal and unjustified

26. In order to plea of abandonment, there is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume his duties. From the record, it is also quite clear that before terminating the services of the petitioner neither he had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned his job but there is no such material which could go to show that any notice had been issued to him for resuming his duties. It has been held by the Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub that:

"When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."

It was further held that :

"The principles of natural justice were required to be followed by giving opportunity to the workman.

"The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was

retrenchment without following the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

27. Thus, Having regard to the law laid down by the Hon'ble Apex Court (supra) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that she had not abandoned the job at her own.

28. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

29. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

30. From the persual of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but he was not allowed to join his duties. Hence, the case of the petitioner clearly falls under the defination of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisons of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act as no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression **"continuous service"** has been defined under Section 25-B of the Act. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the letter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

31. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

32. For the foregoing reason, this Court/Tribunal comes to an inescapable conclusion that the petitioner had not abandoned his job at his own rather his services have been termianted by the respondent on account of alleged transfer and that too during the period of Pandemic COVID-19, which to totally illegal and unjustified. The petitioner is held entitled for re-instatement in service with seniority and continuity. Keeping in view the peculiar facts and circumstances of the present case, the petitioner is also held entitled for back-wages @ 25% to be counted from the date of his transfer/termination, which is held to be unjust illegal and malafide. The issue in question is decided accordingly.

ISSUE NO.2.

33. In order to prove this issue, no evidence has been led by the respondent which could go to show that as to how the present petition is neither competant nor maintainable especially when the same was filed pursuant to the reference received from the appropriate government. I find nothing wrong with the present petition, which is perfectably maintainable. Accordingly, the issue in question is answered against the respondent company.

RELIEF:

34. As a squitter, to my foregoing discussion and findings on issues no. 1 &2 above, the claim filed by the petitioner succeeds and is hereby allowed.

35. Resultantly, the respondent company is directed to re-engage the petitioner on the same post and place i.e. at Dharampur, Himachal Pradesh with seniority and continuity along-with back-wages @ 25% to be counted from the date of his illegal transfer/retrenchment. The awarded back wages shall be paid within a period of two months from the date of award i.e. 1.7.2023, failing which the same shall carry interest @ 9% per annum. The reference sent by the appropriate government is answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 89 of 2017

Instituted on : 06-06-2017

Decided on : 01-07-2023

Harish Chauhan, s/o Shri Inder Singh, r/o Village- Hassi, P.O. Bharara, Tehsil Sunni, District Shimla, H.P. . .*Petitioner.*

VERSUS

The Factory / General Manager, Abbott Healthcare Pvt. Ltd. Village- Bhatauli Khurad, Sai Road Baddi, Distt. Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri H.R. Thakur, Advocate.

For respondent : Shri Rajeev Sharma, Advocate.

AWARD

The following reference petition has been received from the Appropriate Government vide notification dated 18.05.2017, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, which reads as under:

> **"Whether contention of Sh. Harish Chauhan, s/o Shri Inder Singh, r/o Village Jassi, P.O. Bharara, Tehsil Sunni, Distt. Shimla, H.P. regarding his illegal termination of services w.e.f. 18.02.2016 by way of taking resignation under duress, by the management of M/s Abbott Healthcare Pvt. Ltd. Village Bhatauli Khurad, Sai Road Baddi, Distt. Solan, H.P., after receiving full and final dues from the said management is legal and justified? If yes, what relief including reinstatement, amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/ management?"**

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as a technician on 07.10.2008 with Nicholas Piramal India Limited, Baddi, which was taken-over by respondent and he was appointed by the said company on 09.08.2010. On 18.02.2016, show cause notice was issued to the petitioner as to why disciplinary action could not be taken against him on account of allegedly carrying intoxicant product in the premises to cut short the process of inquiry, the petitioner was illegally detained and threatened by the official of the respondent and he was forged to sign papers that the petitioner has resign from service. The petitioner also reported the matter to P.S. Barotiwala on 19.02.2016. The resignation was obtained under duress and threat. The petitioner is a married person and was sole bread earner in his family.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

> **"In view of the above mentioned facts and circumstances, the termination/ resignation letter dated 18.02.2016, forcibly taken under threat from the petitioner by the respondent company, its officials (respondent no. 2 to 5), be declared illegal, without any force for all intents and purpose and respondent Company be directed to take back the services of the petitioner on the same post along with continuity in service and back wages and seniority etc., in the interest of justice."**

4. The lis was resisted and contested by filing written reply to the statement of claim, on behalf of respondent company, on *inter-alia* preliminary objections of maintainability, suppression of material facts, no legal reference and cause of action.

5. On merits, it is submitted that there are 470 workers and 225 staff members working in the respondent company, known for one of the best paying factory in this region of Himachal Pradesh. The petitioner tendered his resignation on 18.02.2016 out of his free will and without any pressure, which was accepted by the respondent and only after that full and final dues were released to him. It is denied that the petitioner was detained or threatened to resign from service. It is submitted that the petitioner was caught red-handed while carrying small quantity of Charas. It is therefore prayed that the claim filed by the petitioner may kindly be dismissed in the interest of justice and the reference may kindly be answered in favour of the respondent company.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply by reaffirming and reiterating the contents those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 02.11.2018, as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 18.02.2016 without complying the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. Whether the present petitioner had tendered his resignation after receiving his full and final dues, as alleged? . .*OPR.*

3. If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

4. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

5. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	:	No
Issue no.2	:	Yes
Issue no. 3	:	Not entitled to any relief
Issue no.4	:	No
Relief.	:	Reference is answered in negative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 to 3.

11. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their final determination and adjudication.

12. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence offer of traineeship letter (PW-1/B), appointment letter (PW-1/C), conformation letter

(PW-1/D), transfer of employment letter (PW-1/E), offer letter (PW-1/F), show cause notice (PW-1/G), acceptance of resignation (PW-1/H), letter dated 18.02.2016 (PW-1/J) and complaints (PW-1/K) and (PW-1/L).

13. In the cross-examination, he has admitted that resignation letter dated 18.02.2016 (R-1) has been issued by him in his own handwriting. He further admitted that acceptance of resignation letter (R-2) bears his signatures. He also admitted that the experience certificate (R-3) has been issued to him which also bears with signatures. He admitted that the letter for request for payment (R-4) also bears his signatures regarding the payment of ₹ 51,842/-. He denied that he had resigned voluntarily from the service of the company. He admitted that there are approximately 1,000 employees with the company. He further admitted that he use to resides in the official accommodation allotted to him by the company. He denied that at the time of inspection he was found in possession of charas in small quantity by the security personal. He denied that when the respondent company was about to handover him to the Police, than he requested the company not to spoil his carrier.

14. To refute the allegations of the petitioner, the respondent had examined Shri Satender Rawat, Head H.R. with the respondent company as (RW-1), who has tendered into evidence his affidavit (RW-1/A), wherein he has reiterated almost all the averments as made thereto in the reply filed by the respondent. He also tendered in evidence documents (R-1) to (R-5).

15. In cross-examination, he admitted that he is personally not aware about the fact as the alleged incident of 18.02.2016 had not taken place before him. He denied that the petitioner was detained for 4-5 hours in a room and was asked to tendered his resignation to avoid payments of arrears to the petitioner. He admitted that there is no documents regarding the conscious and exclusive possession of contravened with the petitioner.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri H.R. Thakur, Advocate for the petitioner has contended with all vehemence that, the services of the petitioner has been engaged by the respondent as technician on 07.02.2008 and thereafter he was working continuously with the respondent company. He had completed 240 days and his services have been terminated illegally without following any procedure under law. He further argued that this is a case of forged resignation as the petitioner was illegally detained and forged to resign from the service in order to throw him out from the job. The petitioner had also reported the matter to the Police. He prayed that the services of the petitioner may kindly be reinstated with all consequential service benefits.

18. *Per contra,* Shri Rajeev Sharma, Ld. Counsel for the respondent company has strenuously argued that the services of the petitioner were never terminated by the respondent company rather the petitioner had tendered his resignation at his own sweet will and without any pressure, which was duly accepted by the respondent and all the dues of the petitioner were cleared and credited in his bank account. He further argued that it is not at all a case of retrenchment, rather it is the simplicitor case of tendering resignation out of free will and consent. He further argued that it is quite apparent from the reference received from the appropriate government that the petitioner had received full and final dues from the respondent management. The documentary evidence filed by the respondent would clearly established that it is a case of clear cut case of tendering resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. Therefore, he prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the perusal of ocular as well as documentary evidence produced on record are relating back to incident which happened on 15/16.02.2016. First of all, the respondent levelled the allegation against the petitioner that he was found carrying small quantity of charas in dried form by the security personal. On account of this, the petitioner was issued show cause notice dated 18.02.2016. On the same date the petitioner had tendered his resignation (R-1) whereby it is written in his own handwriting that for personal reasons he do not want to continue in service and thereby tendered his resignation and his dues be cleared. On the face of it, the resignation was accepted and he may be relieved as per his own request. Separate acceptance of resignation letter dated 18.02.2016 has also been issued whereby the resignation has been accepted by the management and the petitioner has been relieved from service. The experience certificate dated 18.02.2016 (R-3) has also been issued to the petitioner. Both the acceptance letter (R-2) and experience letter (R-3) bears the signature of the petitioner. This apart, the petitioner was also paid full and final settlement amount vide (R-4) and copy of cheque (R-5), which also bears the signatures of the petitioner. The security staff also moved an application whereby it is alleged that on 15.02.2016 during checking by the security staff the petitioner was found in possession of 2/3 small pieces of charas which he had possessed to stop the evil eyes. The entire version setup from the side of the respondent stood duly corroborated by (RW-1). Moreso, the petitioner himself admit that the resignation in his own handwriting. He also admitted that he himself requested for financial dues. The only resistance raised from the side of the petitioner that the resignation was obtained from him under duress as he was threatened by the respondent management. To prove, the petitioner placed on record complaint (PW-1/C) addressed to S.H.O. whereby he himself admitted that he was found in possession Tabaco but he had apologized for the same. Now, the recovery of contravened is not a denying fact.

21. Verily, this is not at all the case of exercising any pressure tactics or obtaining the resignation under duress. The petitioner himself in his own handwriting had tendered the resignation and requested for full and final dues and while accepting the resignation the petitioner was paid full and final settlement amount. The entire averments averred in the resignation (R-1), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of his free will and volition.

22. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd.vs Pancham Singh Rawat And Another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

> **"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would**

not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

23. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

24. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and he continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the petitioner was duly accepted and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968 wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it

will not be open to the person to withdraw his resignation after it was accepted by the authority."

25. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ,** wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

26. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281,** it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter. "

27. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court,** wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

28. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252,** wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

29. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/ petitioner has voluntarily resigned from service and he has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law. Hence, the petitioner is not entitled to any relief from this Tribunal. The issues, in question, are decided accordingly.

ISSUE NO. 4.

30. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is not maintainable especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. I find, nothing wrong with this petition, which is perfactly maintainable in the present form. The issue in question is answered in negative.

RELIEF

31. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1 to 4, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

32. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 93 of 2020

Instituted on : 13-07-2020

Decided on : 01-07-2023

Rajwan s/o Shri Sakheen, r/o Village and Post Office Misser-Wala, Tehsil Paonta Sahib, District Sirmour, H.P. . .*Petitioner*..

VERSUS

1. Surender Hansretta, s/o Late Shri B. R. Hansretta, r/o Village and Post Office Bholar, Tehsil Jubbal, District Shimla, Himachal Pradesh-171216.

2. The Executive Engineer Irrigation and Public Health Department (I&PH) Division Paonta Sahib, District Sirmour, Himachal Pradesh- 173025. ...*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Sandeep Chauhan, Adv.

For respondent No.1 : Shri Prakash Thakur, Dy. DA.

For respondents No. 2 : Ex-parte.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.05.2020, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication:

> **"Whether termination of the services of Sh. Rizwan s/o Sh. Serwin, r/o Village & P.O. Misserwala, Tehsil Paonta Sahib, District Sirmour, H.P. by (i) Sh. Surender Hansretta, r/o VPO Bholar, Tehsil Jubbal, District Shimla, H.P. (Contractor) and (ii) The Executive Engineer, Irrigation and Public Health Division Paonta Sahib, Distt. Sirmour, H.P. (Principal Employer) w.e.f. 04.08.2019, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employers?"**

2. The case of the petitioner as it emerges from the statement of claim is thatw.e.f. 15.08.2016, he was initially engaged through and outsource scheme as an operator for operation and maintenance of sewerage treatment plant Gharat Colony, Devinagar Paonta Sahib by the respondent no. 2 through respondent no. 1. It is further the case of the petitioner that during the course of his employment, the respondents had adopted unfair labour practice by denying the benefits to which he was lawfully entitled. The respondents have not complied with the mandatory provision of law. The petitioner along with other have submitted a demand charter dated 19.11.2018 and during the pendency of conciliation the services of the petitioner along with other workers have been illegally terminated on 04.08.2019. Despite various requests, the service of the petitioner have not been re-engaged hence the petitioner and other workers have filed a writ petition no. 1378/2020 before the Hon'ble High Court and during the pendency of aforesaid writ petition the services of the petitioner and five other workers have been reinstated w.e.f. 01.06.2020, but, without any wages. The petitioner is entitled for wages for the period from 04.08.2019 to 01.06.2020 amounting to ₹ 70,000/-. The termination of the petitioner is illegal and contrary to the provisions of section 25-F of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> **"It is therefore, respectfully prayed that the claim/ petition may kindly be allowed and the following relief(s) may kindly be granted to the petitioner in the interest of justice.**
>
> i. That the wages for the period, the petitioner remained out of service on account of illegal retrenchment for the period 04.08.2019 to 01.06.2020, as per amount quantified in respect of the petitioner amounting to ₹ 70,000/- may kindly ordered to be paid with interest @ 18% per annum.
>
> ii. That the petitioner may be awarded the benefits of seniority with continuity in service.
>
> iii. That the petitioner may be awarded the compensation/ cost as this Learned Court may deem just and proper in the facts and circumstances of the case to defray expense for this unnecessary litigation.
>
> iv. That any other relief which this Learned Court may deem fit in the facts and circumstances of the case may also kindly be granted in favour of the petitioner."

4. The respondent no.1 i.e. Shri Surender Hansretta (contractor) was duly served but despite service, he failed to appear before this Tribunal hence he was proceeded against ex-party as is evident from order dated 09.11.2022.

5. The lis was resisted and contested by respondent No.2 by filing written reply on *inter-alia* raising preliminary objections there is no relationship of employer and employee between the parties the claim is bad for non-joinder of necessary party, maintainability, barred by the law of less judicata and mis-joinder of the necessary party.

6. On merits, it is submitted that the work of sewerage scheme was awarded to the respondent no. 1 by respondent no. 2 through tendering process for three years on outsource basis after completing all codal formalities and the tender was awarded to the lowest bidder. The petitioner was engaged by the contractor and not by respondent department. It is further submitted that the petitioner had submitted the demand notice dated 19.11.2018 which was contested by the replying respondent. The petitioner was neither engaged nor dis-engaged by the respondent department.The respondent department has prayed for the dismissal of the claim petition.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent no. 1 and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 09.11.2022, as under:

1. Whether the termination of the services of the petitioner w.e.f. 04.08.2019, without complying with the provisions of the Industrial Dispute Act, 1947, is illegal and unjustified? If yes, what relief the petitioner is entitled to? . .*OPP.*

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the casecarefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes, Entitled to lump sum compensation.
Issue No.2	No.
Relief.	Reference is partly allowed awarding lump sum compensation to the petitioner.

REASONS FOR FINDINGS

ISSUE NO.1

12. In order to substantiate its case, the petitioner has appeared into the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence demand notice Mark PX-1 and Mark PX-2.

13. In cross-examination, he admitted that he was engaged on outsource basis in August, 2016. He further admitted that the wages were paid to him by the contractor. He denied that the agreement was executed between him and contractor. He admitted that his services were terminated on 04.08.2019. He further admitted that no work was executed by him from 05.08.2019 to 01.06.2020. He also admitted that thereafter, he was engaged by another contractor. He denied that for the similar dispute he had filed writ petition before the Hon'ble High Court.

14. In order to rebut, the respondent No.2 has examined Er. Mohammad Arshad, Executive Engineer of respondent no.2 as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence notice (R-1), award (R-2), tender (R-3), award letter (R-4) and copy of labour and general law (R-5).

15. In cross-examination, on behalf of petitioner he admitted that the sewerage treatment plant is owned by the Government of Himachal Pradesh. He admitted that the tenders were passed in favour of the contractor for operation and maintenance of the plant. He admitted that the Junior Engineer shall remain incharge of the plant. He further admitted that the petitioner was engaged in the said plant by the department through the contractor. He also admitted that the plant was remained operational w.e.f. 04.08.2019 to 01.06.2020. He denied that the petitioner was terminated by the department on 04.08.2019. He further denied that the petitioner was working under the overall supervision and control of the department. He admitted that the name of the workers engaged for the work in the said plant were supplied to the department by the contractor.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Sandeep Chauhan, Ld. Counsel for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the peittioner were termianted by an oral order without complying with the provisions of the Act. The services of the petitioner were engaged by the respodnent no.2 but he was shown to be engaged through respondents no.1, which is nothing but amouting to camouflage. The name of the petitioner was illegally transferred on the rolls of contractors by the department, therefore, the termiantion of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

18. *Per contra*, Shri Prakash Thakur, Dy. DA for the respondent no.2 urged that services of the petitioner were engaged by the respondent no.1 as the respondent department has floated the tenders for the smooth operation and maintenance of Sewerge Scheme and the work was awarded to respondent no.1, who has quoted the lowest rate for the work. The whole responsibility for deployment of staff/workers on the work lies with the contractor. The respondent department has nothing to do with the engagement and termination of the petitioner. The petitioner was the workman of the contractor. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Dy. DA for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examiantion of the entire case record, it is manifestly clear on record that the only grouse raised from the side of the petitioner is that his services were engaged w.e.f. 15.08.2016 as an Operator with the principal employer i.e. respondent department through respondent no.1 (contractor) and he had remained in service till his services were illegally terminated by the respondents.On the other hand, the case set up by the respodnent department is

that the services of the petitioner have never been engaged by the department. The services of the petitioner were enaged by the contractor i.e. the respondents no. 1, as the respdonent deaprtment had outsourced the work of operation and maintainance of Sewerage Scheme after awarding the work and by completing tender process to private contractor. Since, the petitioner was not at all the employee of respodnent department, hence, it had no concern with the engagement or disengagement of the services of the petitioner. It is settled preposition of law that the initial burden lies on the party who alleges the same, therefore, it is the bounden duty of the petitioner to prove the fact that he was initially engaged by the principal emplyer (respodnent department) w.e.f. 15.08.2016. It is the admited case of the petitioner that he was engaged by the contractor and worked as an Operator for operation and maintainance of Sewerage Treatment Plant. Thus, it can be safely concluded that the petitioner was deputed with the respondent no.2, and definately he was engaged and the employee of respondens no.1 contractor only. Moreover, the Industrial Court have no jurisdiction to determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of appropriate government.

21. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent No.1 or not?

22. The next very question, which arises for determination that whether the termination of the services of the petitioner w.e.f. 04.08.2019, is violative of the provisions of the Act. It is the case of the petitioner that he was engaged as an Operator w.e.f. 15.08.2016 and he had worked as such in that capacity till 04.08.2019 and thereafter his services were terminated without complying with the mandatory provisions of the Act as no notice as required under section has not been issued to him nor he was paid the compensation. From the aforesaid deposition of the petitioner, it is clear that he had completed more than 240 days in each and every calendar year, with the respondent no.1 (contractor). Since, the respondent no.1 (contractor) has failed to appear before this Tribunal in order to counter the allegations of the petitioner by leading cogent and satisfactory evidence documentary and despite having been served in accordance with law, therefore, this Tribunal has no other alternate but to believe the version of the petitioner. It is also an admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent No.1 (contractor), while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely sugges that the respondent No.1 (contractor) hasduly complied with the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, **which provides as under:**

> **"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :**
>
> **(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
>
> **(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

23. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part, reads as under:

"*25B. Definition of continuous service. For the purposes of this Chapter,-*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

24. Since, the petitioner has stated to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondents in the latter and spirit. The respondent No.1 did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.The petitioner is the engineer of his own case. He is to prove the case by leading cogent and clinching proof to the same. The petitioner cannot be allowed to take undue advantages out of the weaknesses of the respondents. Simple by raising the demand noitces Mark PX-1 & Mark PX-2, the engagement of the petitioner at the behast of the contractor shall not be converted into the engagement made by the Government. It is alleged from the side of the peittioner that the work done by the petitioner was supervised by J.E of the rewspodnent department as he was the over all incharge of the Plant. The undue benefit by inserting the provisions of contract Labour (Regulation and Abolition) Act, 1970, shall not change the rule of the game, for the reasons that the petitioner was engaged by the contractor. It is the contractor who excercises the over all control and supervision to the services of the petitioner.

25. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

26. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813,** has observed that after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

27. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court dealt with the question of reinstatement and back wages has observed that the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.

28. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

29. Moreso, their Lordships of Hon'ble Supreme Court in another authority reported as **M. L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413,** Hon'ble Supreme Court has observed that though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view.

30. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479,** wherein the Hon'ble Supreme Court, observed that the earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

31. In the instant case, the petitioner was enaged by contractor i.e. respodnent No.1 and thereafter he was deployed at Sewerage Treament Plant. The petitinoer had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respdonent no. 2, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

32. Recent developments, particularily the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case

in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.**

33. In the exposition of law enumurated hereinbefore, now, I would like to award the lump sum compensation to the petitioner in the attendant facts and circumstances of the case.

34. For the foregoing reasons, keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above,the petitioner is held entitled for a lump sum compensation amount of **₹ 70,000/- (₹Seventy Thousand) as lump sum compensation** from the respodnent No.1, who is liable to pay the awarded amount to the petitioner. The issue in question is answered accordingly.

ISSUE NO.2.

35. In order to prove these issue, no specific evidence has been led from the side of the respondent No. 2, which could go to show as to how the present petition has neither competEnt nor maintainable. Moreover, the present petition has been filed by the peittioner pursuant to reference recevied from the appropriate government for legal adjudication. I find no illegallity in the present petition, which is perfectebly maintainable in the present form. Accordingly, this issue is answered in favour of the peittioner and against the respondents.

RELIEF

36. As a sequittor to my above discussion and findings on issues no.1 & 2, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹70,000/- (Rs. Seventy Thousand), to the workman, to be paid by the respondent no.1 *i.e.* Surender Hansretta r/o V.P.O. Bholar, Tehsil Jubbal, District Shimla, H.P., within a period of two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent No. 1 to the workman. This apart, it is expressly made clear that besides lump sum compensation, the petitioner is also entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc., admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 95 of 2020

Instituted on : 13-07-2020

Decided on : 01-07-2023

Saddam Hussain s/o Shri Nazim, r/o Village and Post Office Misser-Wala, Tehsil Paonta Sahib, District Sirmour, H.P. . .*Petitioner.*

VERSUS

1. Surender Hansretta, s/o Late Shri B. R. Hansretta, r/o Village and Post Office Bholar, Tehsil Jubbal, District Shimla, Himachal Pradesh-171216.

2. The Executive Engineer Irrigation and Public Health Department (I&PH) Division Paonta Sahib, District Sirmour, Himachal Pradesh- 173025. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Sandeep Chauhan, Adv.

For respondent No.1 : Shri Prakash Thakur, Dy. DA.

For respondent No. 2 : Ex-parte.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.05.2020, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, which reads as under:

> **"Whether termination of the services of Sh. Saddam Hussain s/o Shri Nazim, r/o Village & P.O. Misserwala, Tehsil Paonta Sahib, District Sirmour, H.P. by (i) Sh. Surender Hansretta, r/o VPO Bholar, Tehsil Jubbal, District Shimla, H.P. (Contractor) and (ii) The Executive Engineer, Irrigation and Public Health Division Paonta Sahib, Distt. Sirmour, H.P. (Principal Employer) w.e.f. 04.08.2019, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employers?"**

2. The case of the petitioner as it emerges from the statement of claim is thatw.e.f. 05.09.2017, he was initially engaged through and outsource scheme as an operator for operation and maintenance of sewerage treatment plant Gharat Colony, DevinagarPaonta Sahib by the respondent no. 2 through respondent no. 1. It is further the case of the petitioner that during the course of his employment, the respondents had adopted unfair labour practice by denying the benefits to which he was lawfully entitled. The respondents have not complied with the mandatory provision of law. The petitioner along with other have submitted a demand charter dated 19.11.2018 and during the pendency of conciliation the services of the petitioner along with other

workers have been illegally terminated on 04.08.2019. Despite various requests, the service of the petitioner have not been re-engaged hence the petitioner and other workers have filed a writ petition no. 1378/2020 before the Hon'ble High Court and during the pendency of aforesaid writ petition the services of the petitioner and five other workers have been reinstated w.e.f. 01.06.2020, but, without any wages. The petitioner is entitled for wages for the period from 04.08.2019 to 01.06.2020 amounting to ₹ 70,000/-. The termination of the petitioner is illegal and contrary to the provisions of section 25-F of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

"It is therefore, respectfully prayed that the claim/ petition may kindly be allowed and the following relief(s) may kindly be granted to the petitioner in the interest of justice.

i. That the wages for the period, the petitioner remained out of service on account of illegal retrenchment for the period 04.08.2019 to 01.06.2020, as per amount quantified in respect of the petitioner amounting to ₹ 70,000/- may kindly ordered to be paid with interest @ 18% per annum.

ii. That the petitioner may be awarded the benefits of seniority with continuity in service.

iii. That the petitioner may be awarded the compensation/ cost as this Learned Court may deem just and proper in the facts and circumstances of the case to defray expense for this unnecessary litigation.

iv. That any other relief which this Learned Court may deem fit in the facts and circumstances of the case may also kindly be granted in favour of the petitioner."

4. The respondent no.1 *i.e.* Shri SurenderHansretta (contractor) was duly served but despite service, he failed to appear before this Tribunal hence he was proceeded against ex-party as is evident from order dated 09.11.2022.

5. The lis was resisted and contested by respondent No.2 by filing written reply on *inter-alia* raising preliminary objections that there is no relationship of employer and employee between the parties, the claim is bad for non-joinder of necessary party, maintainability, barred by the law of res-judicata and mis-joinder of the necessary party.

6. On merits, it is submitted that the work of sewerage scheme was awarded to the respondent no. 1 by respondent no. 2 through tendering process for three years on outsource basis after completing all codal formalities and the tender was awarded to the lowest bidder. The petitioner was engaged by the contractor and not by respondent department. It is further submitted that the petitioner had submitted the demand notice dated 19.11.2018, which was contested by the replying respondent. The petitioner was neither engaged nor dis-engaged by the respondent department.The respondent department has prayed for the dismissal of the claim petition.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent no. 1 and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 09.11.2022, as under:

1. Whether the termination of the services of the petitioner w.e.f. 04.08.2019, without complying with the provisions of the Industrial Dispute Act, 1947, is illegal and unjustified? If yes, what relief the petitioner is entitled to? . .*OPP.*

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the casecarefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1 Yes, Entitled to lump sum compensation of ₹ 70,000/-.

Issue No. 2 No.

Relief. Reference is partly allowed awarding lump sum compensation of ₹ 70,000/- to the petitioner.

REASONS FOR FINDINGS

ISSUE NO.1

12. In order to substantiate its case, the petitioner has appeared into the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence demand notice Mark PX-1 and Mark PX-2.

13. In cross-examination, he admitted that he was engaged on outsource basis in August, 2016. He further admitted that the wages were paid to him by the contractor. He denied that the agreement was executed between him and contractor. He admitted that his services were terminated on 04.08.2019. He further admitted that no work was executed by him from 05.08.2019 to 01.06.2020. He also admitted that thereafter, he was engaged by another contractor. He denied that for the similar dispute he had filed writ petition before the Hon'ble High Court.

14. In order to rebut, the respondent No.2 has examined Er. Mohammad Arshad, Executive Engineer of respondent no.2 as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence notice (R-1), award (R-2), tender (R-3), award letter (R-4) and copy of labour and general law (R-5).

15. In cross-examination, on behalf of petitioner he admitted that the sewerage treatment plant is owned by the Government of Himachal Pradesh. He admitted that the tenders were passed in favour of the contractor for operation and maintenance of the plant. He admitted that the Junior Engineer shall remain incharge of the plant. He further admitted that the petitioner was engaged in the said plant by the department through the contractor. He also admitted that the plant was remained operational w.e.f. 04.08.2019 to 01.06.2020. He denied that the petitioner was terminated by the department on 04.08.2019. He further denied that the petitioner was working under the overall supervision and control of the department. He admitted that the name of the workers engaged for the work in the said plant were supplied to the department by the contractor.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Sandeep Chauhan, Ld. Counsel for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the peittioner were termianted by an oral order without complying with the provisions of the Act. The services of the petitioner were engaged by the respodnent no.2 but he was shown to be engaged through respondents no.1, which is nothing but amouting to camouflage. The name of the petitioner was illegally transferred on the rolls of contractors by the department, therefore, the termiantion of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

18. *Per contra*, Shri Prakash Thakur, Dy. DA for the respondent no. 2 urged that services of the petitioner were engaged by the respondent no.1 as the respondent department has floated the tenders for the smooth operation and maintenance of Sewerge Scheme and the work was awarded to respondent no.1, who has quoted the lowest rate for the work. The whole responsibility for deployment of staff/workers on the work lies with the contractor. The respondent department has nothing to do with the engagement and termination of the petitioner. The petitioner was the workman of the contractor. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Dy. DA for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examiantion of the entire case record, it is manifestly clear on record that the only grouse raised from the side of the petitioner is that his services were engaged w.e.f. 15.08.2016 as an Operator with the principal employer i.e. respondent department through respondent no.1 (contractor) and he had remained in service till his services were illegally terminated by the respondents. On the other hand, the case set up by the respodnent department is that the services of the petitioner have never been engaged by the department. The services of the petitioner were engaged by the contractor i.e. the respondents no. 1, as the respdonent deaprtment had outsourced the work of operation and maintainance of Sewerage Scheme after awarding the work and by completing tender process to private contractor. Since, the petitioner was not at all the employee of respodnent department, hence, it had no concern with the engagement or disengagement of the services of the petitioner. It is settled preposition of law that the initial burden lies entirely on the party who alleges the same, therefore, it is the bounden duty of the petitioner to prove the fact that he was initially engaged by the principal emplyer (respodnent department) w.e.f. 15.08.2016. It is the admited case of the petitioner that he was engaged by the contractor and worked as an Operator for operation and maintainance of Sewerage Treatment Plant. Thus, it can be safely concluded that the petitioner was deputed with the respondent no.2, and definately he was engaged and the employee of respondens no.1 contractor only. Moreover, the Industrial Court have no jurisdiction to determine the question as to whether thecontractual employment should be abolished or not, the same being within the exclusive domain of appropriate government.

21. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent No.1 or not?

22. The next very question, which arises for determination that whether the termination of the services of the petitioner w.e.f. 04.08.2019, is violative of the provisions of the Act. It is the case of the petitioner that he was engaged as an Operator w.e.f. 05.09.2017, and he had worked as such in that capacity till 04.08.2019 and thereafter his services were terminated without complying with the mandatory provisions of the Act as no notice as required under section has not been issued

to him nor he was paid the compensation. From the aforesaid deposition of the petitioner, it is clear that he had completed more than 240 days in each and every calendar year, with the respondent no.1 (contractor). Since, the respondentno.1 (contractor) has failed to appear before this Tribunal in order to counter the allegations of the petitioner by leading cogent and satisfactory evidence documentary and despite having been served in accordance with law, therefore, this Tribunal has no other alternate but to believe the version of the petitioner. It is also an admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent No.1 (contractor), while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely sugges that the respondent No.1 (contractor) hasduly complied with the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, **which provides as under:**

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

23. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part, reads as under:

"*25B. Definition of continuous service. For the purposes of this Chapter,-*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

24. Since, the petitioner has stated to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondents in the latter and spirit. The respondent No.1 did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.The petitioner is the engineer of his own case. He is to prove the case by leading cogent and clinching proof to the same. The petitioner cannot be allowed to take undue advantages out of the weaknesses of the respondents. Simple by raising the demand noitces Mark PX-1 & Mark PX-2, the engagement of the petitioner at the behast of the contractor shall not be converted into the engagement made by the Government. It is alleged from the side of the peittioner that the work done by the petitioner was supervised by J.E of the rewspodnent department as he was the over all incharge of the Plant. The undue benefit by inserting the provisions of contract Labour (Regulation and Abolition) Act, 1970, shall not change the rule of the game, for the reasons that the petitioner was engaged by the contractor. It is the contractor who excercises the over all control and supervision to the services of the petitioner.

25. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

26. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813,** has observed that after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

27. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages has observed that the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.

28. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

29. Moreso, their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413,** Hon'ble Supreme Court has observed that though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g.

Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view.

30. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479,** wherein the Hon'ble Supreme Court, observed that the earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

31. In the instant case, the petitioner was enaged by contractor i.e respodnent No.1 and thereafter he was deployed at Sewerage Treament Plant. The petitinoer had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respdonent no.2, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

32. Recent developments, particularily the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.**

33. In the exposition of law enumurated hereinbefore, now, I would like to award the lump sum compensation to the petitioner in the attendant facts and circumstances of the case.

34. For the foregoing reasons, keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above,the petitioner is held entitled for a lump sum compensation amount of **₹70,000/- (₹ Seventy Thousand) as lump sum compensation** from the respodnent No.1, who isliable to pay the awarded amount to the petitioner. The issue in question is answered accordingly.

ISSUE NO.2.

35. In order to prove these issue, no specific evidence has been led from the side of the respondent No.2, which could go to show as to how the present petition has neither competant nor maintainable. Moreover, the present petition has been filed by the peittioner pursuant to reference recevied from the appropriate government for legal adjudication. I find no illegallity in the present peittion, which is perfectebly maintainable in the present form. Accordingly, this issue is answered in favour of the peittioner and against the respondents.

RELIEF

36. As a sequittor to my above discussion and findings on issues no.1 & 2, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹70,000/- (Rs. Seventy Thousand), to the workman, to be paid by the respondent no.1 i.e. Surender Hansretta r/o VPO Bholar, Tehsil Jubbal, District Shimla, HP, within a period of two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent No. 1to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is also entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc.,** if any, admissible to him, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 96 of 2020

Instituted on : 13-07-2020

Decided on : 01-07-2023

Kuldeep Singh s/o Shri Yash Pal Singh, r/o Village & Post Office Bhangani Sahib, Tehsil Paonta Sahib, District Sirmour, H.P. . .*Petitioner.*

VERSUS

1. Surender Hansretta, s/o Late Shri B.R. Hansretta, r/o Village and Post Office Bholar, Tehsil Jubbal, District Shimla, Himachal Pradesh-171216.

2. The Executive Engineer Irrigation and Public Health Department (I&PH) Division Paonta Sahib, District Sirmour, Himachal Pradesh- 173025. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Sandeep Chauhan, Adv.

For respondent No.1 : Shri Prakash Thakur, Dy. DA.

For respondent No. 2 : Ex-parte.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.05.2020, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, which reads as under:

"Whether termination of the services of Sh. Kuldeep Singh s/o Shri Yash Pal Singh r/o Village & Post Office Bhangani Sahib, Tehsil Paonta Sahib, District Sirmour, H.P. by (i) Sh. Surender Hansretta, r/o VPO Bholar, Tehsil Jubbal, District Shimla, H.P. (Contractor) and (ii) The Executive Engineer, Irrigation and Public Health Division Paonta Sahib, Distt. Sirmour, H.P. (Principal Employer) w.e.f. 04.08.2019, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employers?"

2. The case of the petitioner as it emerges from the statement of claim is thatw.e.f. 01.12.2016, he was initially engaged through and outsource scheme as an operator for operation and maintenance of sewerage treatment plant Gharat Colony, DevinagarPaonta Sahib by the respondent no. 2 through respondent no. 1. It is further the case of the petitioner that during the course of his employment, the respondents had adopted unfair labour practice by denying the benefits to which he was lawfully entitled. The respondents have not complied with the mandatory provision of law. The petitioner along with other have submitted a demand charter dated 19.11.2018 and during the pendency of conciliation the services of the petitioner along with other workers have been illegally terminated on 04.08.2019. Despite various requests, the service of the petitioner have not been re-engaged hence the petitioner and other workers have filed a writ petition no. 1378/2020 before the Hon'ble High Court and during the pendency of aforesaid writ petition the services of the petitioner and five other workers have been reinstated w.e.f. 01.06.2020, but, without any wages. The petitioner is entitled for wages for the period from 04.08.2019 to 01.06.2020 amounting to ₹70,000/-. The termination of the petitioner is illegal and contrary to the provisions of section 25-F of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

"It is therefore, respectfully prayed that the claim/ petition may kindly be allowed and the following relief(s) may kindly be granted to the petitioner in the interest of justice.

i. That the wages for the period, the petitioner remained out of service on account of illegal retrenchment for the period 04.08.2019 to 01.06.2020, as per amount quantified in respect of the petitioner amounting to ₹ 70,000/- may kindly ordered to be paid with interest @ 18% per annum.

ii. That the petitioner may be awarded the benefits of seniority with continuity in service.

iii. That the petitioner may be awarded the compensation/ cost as this Learned Court may deem just and proper in the facts and circumstances of the case to defray expense for this unnecessary litigation.

iv. That any other relief which this Learned Court may deem fit in the facts and circumstances of the case may also kindly be granted in favour of the petitioner."

4. The respondent no.1 i.e. Shri SurenderHansretta (contractor) was duly served but despite service, he failed to appear before this Tribunal hence he was proceeded against ex-party as is evident from order dated 09.11.2022.

5. The lis was resisted and contested by respondent No.2 by filing written reply on *inter-alia* raising preliminary objections that there is no relationship of employer and employee between the parties, the claim is bad for non-joinder of necessary party, maintainability, barred by the law of res-judicata and mis-joinder of the necessary party.

6. On merits, it is submitted that the work of sewerage scheme was awarded to the respondent no. 1 by respondent no. 2 through tendering process for three years on outsource basis after completing all codal formalities and the tender was awarded to the lowest bidder. The petitioner was engaged by the contractor and not by respondent department. It is further submitted that the petitioner had submitted the demand notice dated 19.11.2018, which was contested by the replying respondent. The petitioner was neither engaged nor dis-engaged by the respondent department.The respondent department has prayed for the dismissal of the claim petition.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent no. 1 and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 09.11.2022, as under:

1. Whether the termination of the services of the petitioner w.e.f. 04.08.2019, without complying with the provisions of the Industrial Dispute Act, 1947, is illegal and unjustified? If yes, what relief the petitioner is entitled to? . .*OPP.*

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the casecarefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes, Entitled to lump sum compensation of ₹ 70,000/-.
Issue No. 2	No.
Relief.	Reference is partly allowed awarding lump sum compensation of ₹ 70,000/- to the petitioner.

REASONS FOR FINDINGS

ISSUE NO.1

12. In order to substantiate its case, the petitioner has appeared into the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence demand notice Mark PX-1 and Mark PX-2.

13. In cross-examination, he admitted that he was engaged on outsource basis in August, 2016. He further admitted that the wages were paid to him by the contractor. He denied that the agreement was executed between him and contractor. He admitted that his services were terminated on 04.08.2019. He further admitted that no work was executed by him from 05.08.2019 to 01.06.2020. He also admitted that thereafter, he was engaged by another contractor. He denied that for the similar dispute he had filed writ petition before the Hon'ble High Court.

14. In order to rebut, the respondent No.2 has examined Er. Mohammad Arshad, Executive Engineer of respondent no.2 as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence notice (R-1), award (R-2), tender (R-3), award letter (R-4) and copy of labour and general law (R-5).

15. In cross-examination, on behalf of petitioner he admitted that the sewerage treatment plant is owned by the Government of Himachal Pradesh. He admitted that the tenders were passed in favour of the contractor for operation and maintenance of the plant. He admitted that the Junior Engineer shall remain incharge of the plant. He further admitted that the petitioner was engaged in the said plant by the department through the contractor. He also admitted that the plant was remained operational w.e.f. 04.08.2019 to 01.06.2020. He denied that the petitioner was terminated by the department on 04.08.2019. He further denied that the petitioner was working under the overall supervision and control of the department. He admitted that the name of the workers engaged for the work in the said plant were supplied to the department by the contractor.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Sandeep Chauhan, Ld. Counsel for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the peittioner were termianted by an oral order without complying with the provisions of the Act. The services of the petitioner were engaged by the respodnent no.2 but he was shown to be engaged through respondents no.1, which is nothing but amouting to camouflage. The name of the petitioner was illegally transferred on the rolls of contractors by the department, therefore, the termiantion of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

18. *Per contra*, Shri Prakash Thakur, Dy. DA for the respondent no. 2 urged that services of the petitioner were engaged by the respondent no.1 as the respondent department has floated the tenders for the smooth operation and maintenance of Sewerge Scheme and the work was awarded to respondent no.1, who has quoted the lowest rate for the work. The whole responsibility for deployment of staff/workers on the work lies with the contractor. The respondent department has nothing to do with the engagement and termination of the petitioner. The petitioner was the workman of the contractor. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Dy. DA for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examiantion of the entire case record, it is manifestly clear on record that the only grouse raised from the side of the petitioner is that his services were engaged w.e.f. 01.12.2016 as an Operator with the principal employer i.e respondent department through respondent no.1 (contractor) and he had remained in service till his services were illegally terminated by the respondents.On the other hand, the case set up by the respodnent department is

that the services of the petitioner have never been engaged by the department. The services of the petitioner were engaged by the contractor i.e the respondents no. 1, as the respdonent deaprtment had outsourced the work of operation and maintainance of Sewerage Scheme after awarding the work and by completing tender process to private contractor. Since, the petitioner was not at all the employee of respodnent department, hence, it had no concern with the engagement or disengagement of the services of the petitioner. It is settled preposition of law that the initial burden lies entirely on the party who alleges the same, therefore, it is the bounden duty of the petitioner to prove the fact that he was initially engaged by the principal emplyer (respodnent department) w.e.f. 01.12.2016. It is the admited case of the petitioner that he was engaged by the contractor and worked as an Operator for operation and maintainance of Sewerage Treatment Plant. Thus, it can be safely concluded that the petitioner was deputed with the respondent no.2, and definately he was engaged and the employee of respondens no.1 contractor only. Moreover, the Industrial Court have no jurisdiction to determine the question as to whether thecontractual employment should be abolished or not, the same being within the exclusive domain of appropriate government.

21. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent No.1 or not?

22. The next very question, which arises for determination that whether the termination of the services of the petitioner w.e.f. 04.08.2019, is violative of the provisions of the Act. It is the case of the petitioner that he was engaged as an Operatorw.e.f. 05.09.2017, and he had worked as such in that capacity till 04.08.2019 and thereafter his services were terminated without complying with the mandatory provisions of the Act as no notice as required under section has not been issued to him nor he was paid the compensation. From the aforesaid deposition of the petitioner, it is clear that he had completed more than 240 days in each and every calendar year, with the respondent no.1 (contractor). Since, the respondent no.1 (contractor) has failed to appear before this Tribunal in order to counter the allegations of the petitioner by leading cogent and satisfactory evidence documentary and despite having been served in accordance with law, therefore, this Tribunal has no other alternate but to believe the version of the petitioner. It is also an admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent No.1 (contractor), while terminating the services of the petitioner has to fall within the four corners of the definition of “retrenchment” as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely sugges that the respondent No.1 (contractor) hasduly complied with the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, **which provides as under:**

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

23. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part, reads as under:

"*25B. Definition of continuous service. For the purposes of this Chapter,-*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

24. Since, the petitioner has stated to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondents in the latter and spirit. The respondent No.1 did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.The petitioner is the engineer of his own case. He is to prove the case by leading cogent and clinching proof to the same. The petitioner cannot be allowed to take undue advantages out of the weaknesses of the respondents. Simple by raising the demand noitces Mark PX-1 & Mark PX-2, the engagement of the petitioner at the behast of the contractor shall not be converted into the engagement made by the Government. It is alleged from the side of the peittioner that the work done by the petitioner was supervised by J.E of the rewspodnent department as he was the over all incharge of the Plant. The undue benefit by inserting the provisions of contract Labour (Regulation and Abolition) Act, 1970, shall not change the rule of the game, for the reasons that the petitioner was engaged by the contractor. It is the contractor who excercises the over all control and supervision to the services of the petitioner.

25. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

26. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813,** has observed that after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

27. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court dealt with the question of reinstatement and back wages has observed that the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.

28. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

29. Moreso, their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413,** Hon'ble Supreme Court has observed that though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view.

30. Their Lordship of Hon'ble Supreme Court in another authority reported as U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479, wherein the Hon'ble Supreme Court, observed that the earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

31. In the instant case, the petitioner was enaged by contractor i.e respodnent No.1 and thereafter he was deployed at Sewerage Treament Plant. The petitinoer had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respdonent no. 2, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

32. Recent developments, particularily the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case

in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.**

33. In the exposition of law enumurated hereinbefore, now, I would like to award the lump sum compensation to the petitioner in the attendant facts and circumstances of the case.

34. For the foregoing reasons, keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above,the petitioner is held entitled for a lump sum compensation amount of **₹70,000/- (₹ Seventy Thousand) as lump sum compensation** from the respodnent No.1, who is liable to pay the awarded amount to the petitioner. The issue in question is answered accordingly.

ISSUE NO.2.

35. In order to prove these issue, no specific evidence has been led from the side of the respondent No.2, which could go to show as to how the present petition has neither competent nor maintainable. Moreover, the present petition has been filed by the peittioner pursuant to reference recevied from the appropriate government for legal adjudication. I find no illegallity in the present petition, which is perfectebly maintainable in the present form. Accordingly, this issue is answered in favour of the peittioner and against the respondents.

RELIEF

36. As a sequittor to my above discussion and findings on issues no.1 & 2, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹70,000/- (Rs. Seventy Thousand), to the workman, to be paid by the respondent no.1 i.e. Surender Hansretta r/o VPO Bholar, Tehsil Jubbal, District Shimla, HP, within a period of two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent No. 1to the workman. This apart, it is expressly made clear that besides lump sum compensation, the petitioner is also entitled for all his legal dues *i.e.* gratuity, leave encashment, EPF, ESI etc., if any, admissible to him, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

ReferenceNumber : 97 of 2020

Instituted on : 13-07-2020

Decided on : 01-07-2023

Sanjeev Kumar s/o Shri Prakash Chand, r/o Village Kyarda, P.O. Misserwala, Tehsil Paonta Sahib, District Sirmour, H.P. . .*Petitioner.*

VERSUS

1. Surender Hansretta, s/o Late Shri B. R. Hansretta, r/o Village and Post Office Bholar, Tehsil Jubbal, District Shimla, Himachal Pradesh-171216.

2. The Executive Engineer Irrigation and Public Health Department (I&PH) Division Paonta Sahib, District Sirmour, Himachal Pradesh- 173025. . .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Sandeep Chauhan, Adv.

For respondent No.1 : Shri Prakash Thakur, Dy. DA.

For respondent No. 2 : Ex-parte.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.05.2020, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, which reads as under:

> **"Whether termination of the services of Sh. Sanjeev Kumar s/o Shri Prakash Chand r/o Village Kyarda, P.O. Misserwala, Tehsil Paonta Sahib, District Sirmour, H.P. by (i) Sh. Surender Hansretta, r/o VPO Bholar, Tehsil Jubbal, District Shimla, H.P. (Contractor) and (ii) The Executive Engineer, Irrigation and Public Health Division Paonta Sahib, Distt. Sirmour, H.P. (Principal Employer) w.e.f. 04.08.2019, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employers?"**

2. The case of the petitioner as it emerges from the statement of claim is thatw.e.f. 14.08.2016, he was initially engaged through and outsource scheme as an operator for operation and maintenance of sewerage treatment plant Gharat Colony, Devinagar Paonta Sahib by the respondent no. 2 through respondent no. 1. It is further the case of the petitioner that during the course of his employment, the respondents had adopted unfair labour practice by denying the benefits to which he was lawfully entitled. The respondents have not complied with the mandatory provision of law. The petitioner along with other have submitted a demand charter dated 19.11.2018 and during the pendency of conciliation the services of the petitioner along with other

workers have been illegally terminated on 04.08.2019. Despite various requests, the service of the petitioner have not been re-engaged hence the petitioner and other workers have filed a writ petition no. 1378/2020 before the Hon'ble High Court and during the pendency of aforesaid writ petition the services of the petitioner and five other workers have been reinstated w.e.f. 01.06.2020, but, without any wages. The petitioner is entitled for wages for the period from 04.08.2019 to 01.06.2020 amounting to ₹65,000/-. The termination of the petitioner is illegal and contrary to the provisions of section 25-F of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

"It is therefore, respectfully prayed that the claim/ petition may kindly be allowed and the following relief(s) may kindly be granted to the petitioner in the interest of justice.

i. That the wages for the period, the petitioner remained out of service on account of illegal retrenchment for the period 04.08.2019 to 01.06.2020, as per amount quantified in respect of the petitioner amounting to ` 65,000/- may kindly ordered to be paid with interest @ 18% per annum.

ii. That the petitioner may be awarded the benefits of seniority with continuity in service.

iii. That the petitioner may be awarded the compensation/ cost as this Learned Court may deem just and proper in the facts and circumstances of the case to defray expense for this unnecessary litigation.

iv. That any other relief which this Learned Court may deem fit in the facts and circumstances of the case may also kindly be granted in favour of the petitioner."

4. The respondent no.1 *i.e.* Shri Surender Hansretta (contractor) was duly served but despite service, he failed to appear before this Tribunal hence he was proceeded against ex-party as is evident from order dated 09.11.2022.

5. The lis was resisted and contested by respondent No.2 by filing written reply on *inter-alia* raising preliminary objections that there is no relationship of employer and employee between the parties, the claim is bad for non-joinder of necessary party, maintainability, barred by the law of res-judicata and mis-joinder of the necessary party.

6. On merits, it is submitted that the work of sewerage scheme was awarded to the respondent no. 1 by respondent no. 2 through tendering process for three years on outsource basis after completing all codal formalities and the tender was awarded to the lowest bidder. The petitioner was engaged by the contractor and not by respondent department. It is further submitted that the petitioner had submitted the demand notice dated 19.11.2018, which was contested by the replying respondent. The petitioner was neither engaged nor dis-engaged by the respondent department.The respondent department has prayed for the dismissal of the claim petition.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent no. 1 and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 09.11.2022, as under:

1. Whether the termination of the services of the petitioner w.e.f. 04.08.2019, without complying with the provisions of the Industrial Dispute Act, 1947, is illegal and unjustified? If yes, what relief the petitioner is entitled to? . .*OPP.*

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the casecarefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes, Entitled to lump sum compensation of ₹ 65,000/-.
Issue No.2	No.
Relief	Reference is partly allowed awarding lump sum compensation of ₹ 65,000/- to the petitioner.

REASONS FOR FINDINGS

ISSUE NO.1

12. In order to substantiate its case, the petitioner has appeared into the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence demand notice Mark PX-1 and Mark PX-2.

13. In cross-examination, he admitted that he was engaged on outsource basis in August, 2016. He further admitted that the wages were paid to him by the contractor. He denied that the agreement was executed between him and contractor. He admitted that his services were terminated on 04.08.2019. He further admitted that no work was executed by him from 05.08.2019 to 01.06.2020. He also admitted that thereafter, he was engaged by another contractor. He denied that for the similar dispute he had filed writ petition before the Hon'ble High Court.

14. In order to rebut, the respondent No.2 has examined Er. Mohammad Arshad, Executive Engineer of respondent no.2 as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence notice (R-1), award (R-2), tender (R-3), award letter (R-4) and copy of labour and general law (R-5).

15. In cross-examination, on behalf of petitioner he admitted that the sewerage treatment plant is owned by the Government of Himachal Pradesh. He admitted that the tenders were passed in favour of the contractor for operation and maintenance of the plant. He admitted that the Junior Engineer shall remain incharge of the plant. He further admitted that the petitioner was engaged in the said plant by the department through the contractor. He also admitted that the plant was

remained operational w.e.f. 04.08.2019 to 01.06.2020. He denied that the petitioner was terminated by the department on 04.08.2019. He further denied that the petitioner was working under the overall supervision and control of the department. He admitted that the name of the workers engaged for the work in the said plant were supplied to the department by the contractor.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Sandeep Chauhan, Ld. Counsel for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the peittioner were termianted by an oral order without complying with the provisions of the Act. The services of the petitioner were engaged by the respodnent no.2 but he was shown to be engaged through respondents no.1, which is nothing but amouting to camouflage. The name of the petitioner was illegally transferred on the rolls of contractors by the department, therefore, the termiantion of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

18. *Per contra*, Shri Prakash Thakur, Dy. DA for the respondent no.2 urged that services of the petitioner were engaged by the respondent no.1 as the respondent department has floated the tenders for the smooth operation and maintenance of Sewerge Scheme and the work was awarded to respondent no.1, who has quoted the lowest rate for the work. The whole responsibility for deployment of staff/workers on the work lies with the contractor. The respondent department has nothing to do with the engagement and termination of the petitioner. The petitioner was the workman of the contractor. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Dy. DA for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examiantion of the entire case record, it is manifestly clear on record that the only grouse raised from the side of the petitioner is that his services were engaged w.e.f. 14.08.2016 as an Operator with the principal employer i.e. respondent department through respondent no.1 (contractor) and he had remained in service till his services were illegally terminated by the respondents.On the other hand, the case set up by the respodnent department is that the services of the petitioner have never been engaged by the department. The services of the petitioner were engaged by the contractor i.e the respondents no. 1, as the respdonent deaprtment had outsourced the work of operation and maintainance of Sewerage Scheme after awarding the work and by completing tender process to private contractor. Since, the petitioner was not at all the employee of respodnent department, hence, it had no concern with the engagement or disengagement of the services of the petitioner. It is settled preposition of law that the initial burden lies entirely on the party who alleges the same, therefore, it is the bounden duty of the petitioner to prove the fact that he was initially engaged by the principal emplyer (respodnent department) w.e.f. 14.08.2016. It is the admited case of the petitioner that he was engaged by the contractor and worked as an Operator for operation and maintainance of Sewerage Treatment Plant. Thus, it can be safely concluded that the petitioner was deputed with the respondent no.2, and definately he was engaged and the employee of respondens no.1 contractor only. Moreover, the Industrial Court have no jurisdiction to determine the question as to whether thecontractual employment should be abolished or not, the same being within the exclusive domain of appropriate government.

21. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent No.1 or not?

22. The next very question, which arises for determination that whether the termination of the services of the petitioner w.e.f. 04.08.2019, is violative of the provisions of the Act. It is the case of the petitioner that he was engaged as an Operator w.e.f. 05.09.2017, and he had worked as such in that capacity till 04.08.2019 and thereafter his services were terminated without complying with the mandatory provisions of the Act as no notice as required under section has not been issued to him nor he was paid the compensation. From the aforesaid deposition of the petitioner, it is clear that he had completed more than 240 days in each and every calendar year, with the respondent no.1 (contractor). Since, the respondentno.1 (contractor) has failed to appear before this Tribunal in order to counter the allegations of the petitioner by leading cogent and satisfactory evidence documentary and despite having been served in accordance with law, therefore, this Tribunal has no other alternate but to believe the version of the petitioner. It is also an admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent No.1 (contractor), while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely sugges that the respondent No.1 (contractor) hasduly complied with the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, **which provides as under:**

> **"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :**
>
> **(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
>
> **(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
>
> **(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".**

23. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part, reads as under:

"*25B. Definition of continuous service. For the purposes of this Chapter,-*

> *(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

24. Since, the petitioner has stated to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondents in the latter and spirit. The respondent No.1 did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.The petitioner is the engineer of his own case. He is to prove the case by leading cogent and clinching proof to the same. The petitioner cannot be allowed to take undue advantages out of the weaknesses of the respondents. Simple by raising the demand noitces Mark PX-1 & Mark PX-2, the engagement of the petitioner at the behast of the contractor shall not be converted into the engagement made by the Government. It is alleged from the side of the peittioner that the work done by the petitioner was supervised by J.E of the rewspodnent department as he was the over all incharge of the Plant. The undue benefit by inserting the provisions of contract Labour (Regulation and Abolition) Act, 1970, shall not change the rule of the game, for the reasons that the petitioner was engaged by the contractor. It is the contractor who excercises the over all control and supervision to the services of the petitioner.

25. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

26. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813,** has observed that after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

27. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages has observed that the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.

28. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

29. Moreso, their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413,** Hon'ble Supreme Court has observed that though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124),** we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view.

30. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479,** wherein the Hon'ble Supreme Court, observed that the earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

31. In the instant case, the petitioner was enaged by contractor i.e respodnent No.1 and thereafter he was deployed at Sewerage Treament Plant. The petitinoer had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respdonent no.2, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

32. Recent developments, particularily the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177 and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.**

33. In the exposition of law enumurated hereinbefore, now, I would like to award the lump sum compensation to the petitioner in the attendant facts and circumstances of the case.

34. For the foregoing reasons, keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above,the petitioner is held entitled for a lump sum compensation amount of **₹65,000/- (₹ Sixty Five Thousand) as lump sum compensation** from the respodnent No.1, who isliable to pay the awarded amount to the petitioner. The issue in question is answered accordingly.

ISSUE NO.2.

35. In order to prove these issue, no specific evidence has been led from the side of the respondent No.2, which could go to show as to how the present petition has neither competent nor maintainable. Moreover, the present petition has been filed by the peittioner pursuant to reference recevied from the appropriate government for legal adjudication. I find no illegallity in the present petition, which is perfectebly maintainable in the present form. Accordingly, this issue is answered in favour of the peittioner and against the respondents.

RELIEF

36. As a sequittor to my above discussion and findings on issues no.1 & 2, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹65,000/- (Rs. Sixty Five Thousand), to the workman, to be paid by the respondent no.1 i.e. Surender Hansretta R/o VPO Bholar, Tehsil Jubbal, District Shimla, HP, within a period of two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent No. 1to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is also entitled for all his legal dues i.egratuity, leave encashment, EPF, ESI etc.,** if any, admissible to him, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 98 of 2020

Instituted on : 13-07-2020

Decided on : 01-07-2023

Salman Khan s/o Shri Sher Khan, r/o Village and Post Office Misser-Wala, Tehsil Paonta Sahib, District Sirmour, H.P. . .*Petitioner.*

VERSUS

1. Surender Hansretta, s/o Late Shri B. R. Hansretta, r/o Village and Post Office Bholar, Tehsil Jubbal, District Shimla, Himachal Pradesh-171216.

2. The Executive Engineer Irrigation and Public Health Department (I&PH) Division Paonta Sahib, District Sirmour, Himachal Pradesh- 173025. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Sandeep Chauhan, Adv.

For respondent No.1 : Shri Prakash Thakur, Dy. DA.

For respondent No. 2 : Ex-parte.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.05.2020, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, which reads as under:

> **"Whether termination of the services of Sh. Salman Khan s/o Shri Sher Khan, r/o Village & P.O. Misserwala, Tehsil Paonta Sahib, District Sirmour, H.P. by (i) Sh. Surender Hansretta, r/o VPO Bholar, Tehsil Jubbal, District Shimla, H.P. (Contractor) and (ii) The Executive Engineer, Irrigation and Public Health Division Paonta Sahib, Distt. Sirmour, H.P. (Principal Employer) w.e.f. 04.08.2019, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employers?"**

2. The case of the petitioner as it emerges from the statement of claim is that w.e.f. 14.09.2016, he was initially engaged through and outsource scheme as an operator for operation and maintenance of sewerage treatment plant Gharat Colony, Devinagar Paonta Sahib by the respondent no. 2 through respondent no. 1. It is further the case of the petitioner that during the course of his employment, the respondents had adopted unfair labour practice by denying the benefits to which he was lawfully entitled. The respondents have not complied with the mandatory provision of law. The petitioner along with other have submitted a demand charter dated 19.11.2018 and during the pendency of conciliation the services of the petitioner along with other workers have been illegally terminated on 04.08.2019. Despite various requests, the service of the petitioner have not been re-engaged hence the petitioner and other workers have filed a writ petition no. 1378/2020 before the Hon'ble High Court and during the pendency of aforesaid writ petition the services of the petitioner and five other workers have been reinstated w.e.f. 01.06.2020, but, without any wages. The petitioner is entitled for wages for the period from 04.08.2019 to 01.06.2020 amounting to ₹ 70,000/-. The termination of the petitioner is illegal and contrary to the provisions of section 25-F of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> **"It is therefore, respectfully prayed that the claim/ petition may kindly be allowed and the following relief(s) may kindly be granted to the petitioner in the interest of justice.**
>
> **i. That the wages for the period, the petitioner remained out of service on account of illegal retrenchment for the period 04.08.2019 to 01.06.2020, as per amount quantified in respect of the petitioner amounting to ₹ 70,000/- may kindly ordered to be paid with interest @ 18% per annum.**

ii. That the petitioner may be awarded the benefits of seniority with continuity in service.

iii. That the petitioner may be awarded the compensation/ cost as this Learned Court may deem just and proper in the facts and circumstances of the case to defray expense for this unnecessary litigation.

iv. That any other relief which this Learned Court may deem fit in the facts and circumstances of the case may also kindly be granted in favour of the petitioner."

4. The respondent no.1 i.e. Shri Surender Hansretta (contractor) was duly served but despite service, he failed to appear before this Tribunal hence he was proceeded against ex-party as is evident from order dated 09.11.2022.

5. The lis was resisted and contested by respondent No.2 by filing written reply on inter-alia raising preliminary objections that there is no relationship of employer and employee between the parties, the claim is bad for non-joinder of necessary party, maintainability, barred by the law of res-judicata and mis-joinder of the necessary party.

6. On merits, it is submitted that the work of sewerage scheme was awarded to the respondent no. 1 by respondent no. 2 through tendering process for three years on outsource basis after completing all codal formalities and the tender was awarded to the lowest bidder. The petitioner was engaged by the contractor and not by respondent department. It is further submitted that the petitioner had submitted the demand notice dated 19.11.2018, which was contested by the replying respondent. The petitioner was neither engaged nor dis-engaged by the respondent department.The respondent department has prayed for the dismissal of the claim petition.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent no. 1 and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 09.11.2022, as under:

1. Whether the termination of the services of the petitioner w.e.f. 04.08.2019, without complying with the provisions of the Industrial Dispute Act, 1947, is illegal and unjustified? If yes, what relief the petitioner is entitled to? . .*OPP.*

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes, Entitled to lump sum compensation of ₹ 70,000/-.
Issue No.2	No.
Relief	Reference is partly allowed awarding lump sum compensation of ₹ 70,000/- to the petitioner.

REASONS FOR FINDINGS

ISSUE NO.1

12. In order to substantiate its case, the petitioner has appeared into the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence demand notice Mark PX-1 and Mark PX-2.

13. In cross-examination, he admitted that he was engaged on outsource basis in August, 2016. He further admitted that the wages were paid to him by the contractor. He denied that the agreement was executed between him and contractor. He admitted that his services were terminated on 04.08.2019. He further admitted that no work was executed by him from 05.08.2019 to 01.06.2020. He also admitted that thereafter, he was engaged by another contractor. He denied that for the similar dispute he had filed writ petition before the Hon'ble High Court.

14. In order to rebut, the respondent No.2 has examined Er. Mohammad Arshad, Executive Engineer of respondent no.2 as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence notice (R-1), award (R-2), tender (R-3), award letter (R-4) and copy of labour and general law (R-5).

15. In cross-examination, on behalf of petitioner he admitted that the sewerage treatment plant is owned by the Government of Himachal Pradesh. He admitted that the tenders were passed in favour of the contractor for operation and maintenance of the plant. He admitted that the Junior Engineer shall remain incharge of the plant. He further admitted that the petitioner was engaged in the said plant by the department through the contractor. He also admitted that the plant was remained operational w.e.f. 04.08.2019 to 01.06.2020. He denied that the petitioner was terminated by the department on 04.08.2019. He further denied that the petitioner was working under the overall supervision and control of the department. He admitted that the name of the workers engaged for the work in the said plant were supplied to the department by the contractor.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Sandeep Chauhan, Ld. Counsel for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the peittioner were termianted by an oral order without complying with the provisions of the Act. The services of the petitioner were engaged by the respodnent no.2 but he was shown to be engaged through respondents no.1, which is nothing but amouting to camouflage. The name of the petitioner was illegally transferred on the rolls of contractors by the department, therefore, the termiantion of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

18. *Per contra*, Shri Prakash Thakur, Dy. DA for the respondent no.2urged that services of the petitioner were engaged by the respondent no.1 as the respondent department has floated the

tenders for the smooth operation and maintenance of Sewerge Scheme and the work was awarded to respondent no.1, who has quoted the lowest rate for the work. The whole responsibility for deployment of staff/workers on the work lies with the contractor. The respondent department has nothing to do with the engagement and termination of the petitioner. The petitioner was the workman of the contractor. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Dy. DA for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examiantion of the entire case record, it is manifestly clear on record that the only grouse raised from the side of the petitioner is that his services were engaged w.e.f. 14.09.2016 as an Operator with the principal employer i.e. respondent department through respondent no.1 (contractor) and he had remained in service till his services were illegally terminated by the respondents.On the other hand, the case set up by the respodnent department is that the services of the petitioner have never been engaged by the department. The services of the petitioner were engaged by the contractor i.e. the respondents no. 1, as the respdonent deaprtment had outsourced the work of operation and maintainance of Sewerage Scheme after awarding the work and by completing tender process to private contractor. Since, the petitioner was not at all the employee of respodnent department, hence, it had no concern with the engagement or disengagement of the services of the petitioner. It is settled preposition of law that the initial burden lies entirely on the party who alleges the same, therefore, it is the bounden duty of the petitioner to prove the fact that he was initially engaged by the principal emplyer (respodnent department) w.e.f. 15.08.2016. It is the admited case of the petitioner that he was engaged by the contractor and worked as an Operator for operation and maintainance of Sewerage Treatment Plant. Thus, it can be safely concluded that the petitioner was deputed with the respondent no.2, and definately he was engaged and the employee of respondens no.1 contractor only. Moreover, the Industrial Court have no jurisdiction to determine the question as to whether thecontractual employment should be abolished or not, the same being within the exclusive domain of appropriate government.

21. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent No.1 or not?

22. The next very question, which arises for determination that whether the termination of the services of the petitioner w.e.f. 04.08.2019, is violative of the provisions of the Act. It is the case of the petitioner that he was engaged as an Operator w.e.f. 14.09.2016, and he had worked as such in that capacity till 04.08.2019 and thereafter his services were terminated without complying with the mandatory provisions of the Act as no notice as required under section has not been issued to him nor he was paid the compensation. From the aforesaid deposition of the petitioner, it is clear that he had completed more than 240 days in each and every calendar year, with the respondent no.1 (contractor). Since, the respondentno.1 (contractor) has failed to appear before this Tribunal in order to counter the allegations of the petitioner by leading cogent and satisfactory evidence documentary and despite having been served in accordance with law, therefore, this Tribunal has no other alternate but to believe the version of the petitioner. It is also an admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent No.1 (contractor), while terminating the services of the petitioner has to fall within the four corners of the definition of “retrenchment” as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely sugges that the respondent No.1 (contractor) hasduly complied with the provisions of section 25-F of the Act.

Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, **which provides as under:**

> **"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :**
>
> **(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
>
> **(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
>
> **(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".**

23. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part, reads as under:

> "*25B. Definition of continuous service. For the purposes of this Chapter,—*
>
> *(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
>
> *(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
>
> *(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
>
> *(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
>
> *(ii) two hundred and forty days, in any other case…."*

24. Since, the petitioner has stated to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly,

the provisions of Section 25-F of the Act, were not followed or complied with by the respondents in the latter and spirit. The respondent No.1 did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.The petitioner is the engineer of his own case. He is to prove the case by leading cogent and clinching proof to the same. The petitioner cannot be allowed to take undue advantages out of the weaknesses of the respondents. Simple by raising the demand noitces Mark PX-1 & Mark PX-2, the engagement of the petitioner at the behast of the contractor shall not be converted into the engagement made by the Government. It is alleged from the side of the peittioner that the work done by the petitioner was supervised by J.E of the rewspodnent department as he was the over all incharge of the Plant. The undue benefit by inserting the provisions of contract Labour (Regulation and Abolition) Act, 1970, shall not change the rule of the game, for the reasons that the petitioner was engaged by the contractor. It is the contractor who excercises the over all control and supervision to the services of the petitioner.

25. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

26. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813,** has observed that after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

27. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages has observed that the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.

28. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

29. Moreso, their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413,** Hon'ble Supreme Court has observed that though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124),** we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view.

30. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479,** wherein the Hon'ble Supreme Court, observed that the earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

31. In the instant case, the petitioner was enaged by contractor i.e respodnent No.1 and thereafter he was deployed at Sewerage Treament Plant. The petitinoer had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respdonent no.2, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

32. Recent developments, particularily the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.**

33. In the exposition of law enumurated hereinbefore, now, I would like to award the lump sum compensation to the petitioner in the attendant facts and circumstances of the case.

34. For the foregoing reasons, keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above,the petitioner is held entitled for a lump sum compensation amount of **₹ 70,000/- (₹ Seventy Thousand) as lump sum compensation** from the respodnent No.1, who isliable to pay the awarded amount to the petitioner. The issue in question is answered accordingly.

ISSUE NO.2.

35. In order to prove these issue, no specific evidence has been led from the side of the respondent No. 2, which could go to show as to how the present petition has neither competant nor maintainable. Moreover, the present petition has been filed by the peittioner pursuant to reference recevied from the appropriate government for legal adjudication. I find no illegallity in the present petition, which is perfectebly maintainable in the present form. Accordingly, this issue is answered in favour of the peittioner and against the respondents.

RELIEF

36. As a sequittor to my above discussion and findings on issues no.1 & 2, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹70,000/- (Rs. Seventy Thousand), to the workman, to be paid by the respondent no.1 *i.e.* Surender Hansretta r/o VPO Bholar, Tehsil Jubbal, District Shimla, HP, within a period of two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent No. 1 to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is also entitled for all his legal dues *i.e.* gratuity, leave encashment, EPF, ESI etc.,** if any, admissible to him, in accordance with

law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 100 of 2020

Instituted on : 13-07-2020

Decided on : 01-07-2023

Naveen Kumar s/o Shri Ravi Pal, r/o Village Pipliwal, P.O. Puruwala, Tehsil Paonta Sahib, District Sirmour, H.P. . .*Petitioner.*

VERSUS

1. Surender Hansretta, s/o Late Shri B.R. Hansretta, r/o Village and Post Office Bholar, Tehsil Jubbal, District Shimla, Himachal Pradesh-171216.

2. The Executive Engineer Irrigation and Public Health Department (I&PH) Division Paonta Sahib, District Sirmour, Himachal Pradesh- 173025. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Sandeep Chauhan, Adv.

For respondent No.1 : Shri Prakash Thakur, Dy. DA.

For respondent No. 2 : Ex-parte.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.05.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

"Whether termination of the services of Sh. Naveen Kumar s/o Shri Ravi Pal r/o Village Pipliwal, P.O. Puruwala, Tehsil Paonta Sahib, District Sirmour, H.P. by (i) Sh. Surender Hansretta, r/o VPO Bholar, Tehsil Jubbal, District Shimla, H.P. (Contractor) and (ii) The Executive Engineer, Irrigation and Public Health Division

Paonta Sahib, Distt. Sirmour, H.P. (Principal Employer) w.e.f. 04.08.2019, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employers?"

2. The case of the petitioner as it emerges from the statement of claim is that w.e.f. 15.08.2016, he was initially engaged through and outsource scheme as an operator for operation and maintenance of sewerage treatment plant Gharat Colony, DevinagarPaonta Sahib by the respondent no. 2 through respondent no. 1. It is further the case of the petitioner that during the course of his employment, the respondents had adopted unfair labour practice by denying the benefits to which he was lawfully entitled. The respondents have not complied with the mandatory provision of law. The petitioner along with other have submitted a demand charter dated 19.11.2018 and during the pendency of conciliation the services of the petitioner along with other workers have been illegally terminated on 04.08.2019. Despite various requests, the service of the petitioner have not been re-engaged hence the petitioner and other workers have filed a writ petition no. 1378/2020 before the Hon'ble High Court and during the pendency of aforesaid writ petition the services of the petitioner and five other workers have been reinstated w.e.f. 01.06.2020, but, without any wages. The petitioner is entitled for wages for the period from 04.08.2019 to 01.06.2020 amounting to ₹ 65,000/-. The termination of the petitioner is illegal and contrary to the provisions of section 25-F of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, **which reads as under:**

"It is therefore, respectfully prayed that the claim/ petition may kindly be allowed and the following relief(s) may kindly be granted to the petitioner in the interest of justice.

i. **That the wages for the period, the petitioner remained out of service on account of illegal retrenchment for the period 04.08.2019 to 01.06.2020, as per amount quantified in respect of the petitioner amounting to ₹ 65,000/- may kindly ordered to be paid with interest @ 18% per annum.**

ii. **That the petitioner may be awarded the benefits of seniority with continuity in service.**

iii. **That the petitioner may be awarded the compensation/ cost as this Learned Court may deem just and proper in the facts and circumstances of the case to defray expense for this unnecessary litigation.**

iv. **That any other relief which this Learned Court may deem fit in the facts and circumstances of the case may also kindly be granted in favour of the petitioner."**

4. The respondent no.1 *i.e.* Shri Surender Hansretta (contractor) was duly served but despite service, he failed to appear before this Tribunal hence he was proceeded against ex-party as is evident from order dated 09.11.2022.

5. The lis was resisted and contested by respondent No.2 by filing written reply on inter-alia raising preliminary objections that there is no relationship of employer and employee between the parties, the claim is bad for non-joinder of necessary party, maintainability, barred by the law of res-judicata and mis-joinder of the necessary party.

6. On merits, it is submitted that the work of sewerage scheme was awarded to the respondent no. 1 by respondent no. 2 through tendering process for three years on outsource basis after completing all codal formalities and the tender was awarded to the lowest bidder. The petitioner was engaged by the contractor and not by respondent department. It is further submitted

that the petitioner had submitted the demand notice dated 19.11.2018, which was contested by the replying respondent. The petitioner was neither engaged nor dis-engaged by the respondent department.The respondent department has prayed for the dismissal of the claim petition.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent no. 1 and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 09.11.2022, as under:

1. Whether the termination of the services of the petitioner w.e.f. 04.08.2019, without complying with the provisions of the Industrial Dispute Act, 1947, is illegal and unjustified? If yes, what relief the petitioner is entitled to? . .*OPP.*

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .*OPR.*

3. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the casecarefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes, Entitled to lump sum compensation of ₹65,000/-.
Issue No. 2	No
Relief.	Reference is partly allowed awarding lump sum compensation of ₹ 65,000/- to the petitioner.

REASONS FOR FINDINGS

ISSUE NO.1

12. In order to substantiate its case, the petitioner has appeared into the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence demand notice Mark PX-1 and Mark PX-2.

13. In cross-examination, he admitted that he was engaged on outsource basis in August, 2016. He further admitted that the wages were paid to him by the contractor. He denied that the agreement was executed between him and contractor. He admitted that his services were terminated on 04.08.2019. He further admitted that no work was executed by him from 05.08.2019 to 01.06.2020. He also admitted that thereafter, he was engaged by another contractor. He denied that for the similar dispute he had filed writ petition before the Hon'ble High Court.

14. In order to rebut, the respondent No.2 has examined Er. Mohammad Arshad, Executive Engineer of respondent no.2 as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence

notice (R-1), award (R-2), tender (R-3), award letter (R-4) and copy of labour and general law (R-5).

15. In cross-examination, on behalf of petitioner he admitted that the sewerage treatment plant is owned by the Government of Himachal Pradesh. He admitted that the tenders were passed in favour of the contractor for operation and maintenance of the plant. He admitted that the Junior Engineer shall remain incharge of the plant. He further admitted that the petitioner was engaged in the said plant by the department through the contractor. He also admitted that the plant was remained operational w.e.f. 04.08.2019 to 01.06.2020. He denied that the petitioner was terminated by the department on 04.08.2019. He further denied that the petitioner was working under the overall supervision and control of the department. He admitted that the name of the workers engaged for the work in the said plant were supplied to the department by the contractor.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Sandeep Chauhan, Ld. Counsel for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the peittioner were termianted by an oral order without complying with the provisions of the Act. The services of the petitioner were engaged by the respodnent no.2 but he was shown to be engaged through respondents no.1, which is nothing but amouting to camouflage. The name of the petitioner was illegally transferred on the rolls of contractors by the department, therefore, the termiantion of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

18. *Per contra*, Shri Prakash Thakur, Dy. DA for the respondent no. 2 urged that services of the petitioner were engaged by the respondent no.1 as the respondent department has floated the tenders for the smooth operation and maintenance of Sewerge Scheme and the work was awarded to respondent no.1, who has quoted the lowest rate for the work. The whole responsibility for deployment of staff/workers on the work lies with the contractor. The respondent department has nothing to do with the engagement and termination of the petitioner. The petitioner was the workman of the contractor. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Dy. DA for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examiantion of the entire case record, it is manifestly clear on record that the only grouse raised from the side of the petitioner is that his services were engaged w.e.f. 15.08.2016 as an Operator with the principal employer i.e respondent department through respondent no.1 (contractor) and he had remained in service till his services were illegally terminated by the respondents. On the other hand, the case set up by the respodnent department is that the services of the petitioner have never been engaged by the department. The services of the petitioner were engaged by the contractor i.e. the respondents no. 1, as the respdonent deaprtment had outsourced the work of operation and maintainance of Sewerage Scheme after awarding the work and by completing tender process to private contractor. Since, the petitioner was not at all the employee of respodnent department, hence, it had no concern with the engagement or disengagement of the services of the petitioner. It is settled preposition of law that the initial burden lies entirely on the party who alleges the same, therefore, it is the bounden duty of the petitioner to prove the fact that he was initially engaged by the principal emplyer (respodnent department) w.e.f. 15.08.2016. It is the admited case of the petitioner that he was engaged by the contractor and worked as an Operator for operation and maintainance of Sewerage Treatment Plant. Thus, it can be

safely concluded that the petitioner was deputed with the respondent no.2, and definately he was engaged and the employee of respondens no.1 contractor only. Moreover, the Industrial Court have no jurisdiction to determine the question as to whether thecontractual employment should be abolished or not, the same being within the exclusive domain of appropriate government.

21. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent No.1 or not?

22. The next very question, which arises for determination that whether the termination of the services of the petitioner w.e.f. 04.08.2019, is violative of the provisions of the Act. It is the case of the petitioner that he was engaged as an Operatorw.e.f. 05.09.2017, and he had worked as such in that capacity till 04.08.2019 and thereafter his services were terminated without complying with the mandatory provisions of the Act as no notice as required under section has not been issued to him nor he was paid the compensation. From the aforesaid deposition of the petitioner, it is clear that he had completed more than 240 days in each and every calendar year, with the respondent no.1 (contractor). Since, the respondentno.1 (contractor) has failed to appear before this Tribunal in order to counter the allegations of the petitioner by leading cogent and satisfactory evidence documentary and despite having been served in accordance with law, therefore, this Tribunal has no other alternate but to believe the version of the petitioner. It is also an admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent No.1 (contractor), while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely sugges that the respondent No.1 (contractor) hasduly complied with the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, **which provides as under:**

> **"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :**
>
> **(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
>
> **(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
>
> **(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".**

23. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part, reads as under:

"*25B. Definition of continuous service. For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

24. Since, the petitioner has stated to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondents in the latter and spirit. The respondent No.1 did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.The petitioner is the engineer of his own case. He is to prove the case by leading cogent and clinching proof to the same. The petitioner cannot be allowed to take undue advantages out of the weaknesses of the respondents. Simple by raising the demand noitces Mark PX-1 & Mark PX-2, the engagement of the petitioner at the behast of the contractor shall not be converted into the engagement made by the Government. It is alleged from the side of the peittioner that the work done by the petitioner was supervised by J.E of the rewspodnent department as he was the over all incharge of the Plant. The undue benefit by inserting the provisions of contract Labour (Regulation and Abolition) Act, 1970, shall not change the rule of the game, for the reasons that the petitioner was engaged by the contractor. It is the contractor who excercises the over all control and supervision to the services of the petitioner.

25. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

26. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813,** has observed that after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

27. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as Nehru **Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages has observed that the

decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.

28. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

29. Moreso, their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413,** Hon'ble Supreme Court has observed that though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124),** we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view.

30. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479,** wherein the Hon'ble Supreme Court, observed that the earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

31. In the instant case, the petitioner was enaged by contractor i.e respodnent No.1 and thereafter he was deployed at Sewerage Treament Plant. The petitinoer had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respdonent no.2, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

32. Recent developments, particularily the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.**

33. In the exposition of law enumurated hereinbefore, now, I would like to award the lump sum compensation to the petitioner in the attendant facts and circumstances of the case.

34. For the foregoing reasons, keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above,the petitioner is held entitled for a lump sum compensation amount of ₹ 65,000/- (₹ Sixty Five Thousand) as lump sum compensation from the respodnent No.1, who is liable to pay the awarded amount to the petitioner. The issue in question is answered accordingly.

ISSUE NO.2.

35. In order to prove these issue, no specific evidence has been led from the side of the respondent No. 2, which could go to show as to how the present petition has neither competant nor maintainable. Moreover, the present petition has been filed by the peittioner pursuant to reference recevied from the appropriate government for legal adjudication. I find no illegallity in the present peittion, which is perfectebly maintainable in the present form. Accordingly, this issue is answered in favour of the peittioner and against the respondents.

RELIEF

36. As a sequittor to my above discussion and findings on issues no.1 & 2, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹65,000/- (Rs. Sixty Five Thousand), to the workman, to be paid by the respondent no.1i.eSurenderHansretta R/o VPO Bholar, Tehsil Jubbal, District Shimla, HP, within a period of two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent No. 1to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is also entitled for all his legal dues i.egratuity, leave encashment, EPF, ESI etc.,** if any, admissible to him, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

ReferenceNumber : 183 of 2021

Instituted on : 16-09-2021

Decided on : 01-07-2023

Virender Singh s/o Shri Mohan Singh, r/o Village Mashu and Post Office Jamna, Tehsil Kamrau, District Sirmour, H.P. . .*Petitioner.*

VERSUS

The Occupier/Factory Manager M/s Relax Pharmaceuticals Unit-I, Plot No. 48AB Industrial Area Gondpur Paonta Sahib, District Sirmour, HP. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Brijesh Chauhan, Advocate

For respondent : Shri A.K Gupta, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government v*ide* notification dated 25.08.2021, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, which reads as under:

> **"Whether termination of services of Shri Virender Singh s/o Shri Mohan Singh r/o Village Mashu and Post Office Jamna, Tehsil Kamrau, District Sirmour, HP by the Occupier/Factory Manager M/s Relax Pharmaceuticals Unit-I, Plot No. 48AB Industrial Area Gondpur Paonta Sahib, District Sirmour, HP after conducting the domestic enquiry and without complying with the provision of the Industrial Dispute Act 1947,as alleged by the workman, is legal and justified? if not, what relief including re-instatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?"**

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. The petitioner namely Shri Virender Singh has stated at bar that he had raised an Industrial Dispute *qua* the termination of his services after conducting the domestic enquiry and without complying with the provisions of the Act. The Industrial Dispute raised by him has been full & finally settled as the respondent company has agreed to pay him an amount of ₹25000/- (Rupees Twenty Five Thousand) along-with experience certificate (PA). Since, he has received full and final settlement amount, hence, nothing survive in the present industrial dispute. To this effect his statement recorded separately and placed on record.

4. On the other hand Shri Suraj Kumar, HR Officer of the respondent company vide his separate statement has stated that the industrial dispute raised by the petitioner has been settled amicably as the respondent company has paid an amount of ₹25000/- (Rupees Twenty Five Thousand) and also issued experience certificate (PA) in favour of the petitioner. Now, nothing survive in the present industrial dispute which may kindly be answered accordingly.

5. Thus, keeping in view the attendant facts and circumstances of the case *vis-a–vis* perusal of the entire case record, which manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has paid a sum of ₹ 25000/- (Rupees Twenty Five Thousand), as full and final settlement amount of the claim.From the aforesaid statements of the parties, it is apparently established on record that the parties have compromised the industrial dispute arising out of reference no. 183 of 2021 out of their own sweet will and free consent. The said compromise/settlement made between the parties is within the fore corner of the law.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensatedby the respondent and paid a sum of ₹25,000/- (Rupees Twenty Five Thousand only)** as lump sum compensation to the petitioner out of which Rs. 20,000/- (Rs. Twenty Thousand) has been paid through Cheque Nos. 106084 (PB), 106085 (PC) dated 26.06.2023 and Rs. 5,000/- though Google Pay (PX-1).

7. Consequently, the reference is answered accordingly and the award is passed as per the statements of both the parties and documents (PA), (PB), (PC) and (PX-1),which shall form an integral part and parcel of this award of mine. The reference is disposed off accordingly.

8. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01.07.2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

तकनीकी शिक्षा, व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग

अधिसूचना

शिमला–2, 16 अक्तूबर, 2023

संख्याः ई.डी.एन.(टीई)ए.(3)1 / 2023.––हिमाचल प्रदेश के राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, हिमाचल प्रदेश तकनीकी शिक्षा, व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग में विभागाध्यक्ष (इंजीनियरिंग और नॉन–इंजीनियरिंग) ग्रुप–ए (राजपत्रित) के पद के लिए इस अधिसूचना से संलग्न उपाबन्ध–'क' के अनुसार भर्ती और प्रोन्नति नियम बनाते हैं, अर्थात्:––

1. संक्षिप्त नाम और प्रारम्भ.––(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश तकनीकी शिक्षा, व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग, विभागाध्यक्ष (इंजीनियरिंग और नॉन–इंजीनियरिंग) ग्रुप–ए (राजपत्रित) भर्ती और प्रोन्नति नियम, 2023 है।

(2) ये नियम राजपत्र (ई–गजट), हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे।

2. निरसन और व्यावृतियां.––(1) (i) इस विभाग की अधिसूचना संख्याः 1–2 / 83 / एस0टी0वी0 वॉल–II, तारीख 22–6–1990 द्वारा अधिसूचित हिमाचल प्रदेश तकनीकी शिक्षा व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग में विभागाध्यक्ष में इलैक्ट्रॉनिक्स एडं टैली–कॉम्युनिकेशन (वर्ग–I राजपत्रित) भर्ती और प्रोन्नति नियम, 1990,

(ii) इस विभाग की अधिसूचना संख्याः ई0डी0एन0 (टी0ई0)ए(3)10 / 96, तारीख 04–07–2000 द्वारा अधिसूचित हिमाचल प्रदेश तकनीकी शिक्षा व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग, विभागाध्यक्ष (मकैनिकल इंजीनियरिंग) वर्ग–I (राजपत्रित) भर्ती और प्रोन्नति नियम, 2000,

(iii) इस विभाग की अधिसूचना संख्याः ई0डी0एन0 (टी0ई0)ए(3)14 / 97, तारीख 17–11–98 द्वारा अधिसूचित हिमाचल प्रदेश तकनीकी शिक्षा व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग, विभागाध्यक्ष में इलैक्ट्रीकल इंजीनियरिंग वर्ग–I (राजपत्रित) भर्ती और प्रोन्नति नियम, 1997,

(iv) इस विभाग की अधिसूचना संख्याः ई0डी0एन0 (टी0ई0)ए(3)8 / 96, तारीख 20–05–2000 द्वारा अधिसूचित हिमाचल प्रदेश तकनीकी शिक्षा व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग, विभागाध्यक्ष (सिविल इंजीनियरिंग) वर्ग–I (राजपत्रित) भर्ती और प्रोन्नति नियम, 2000,

(v) इस विभाग की अधिसूचना संख्याः ई0डी0एन0 (टी0ई0)ए(3)17 / 2006, तारीख 2008 द्वारा अधिसूचित हिमाचल प्रदेश तकनीकी शिक्षा व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग, विभागाध्यक्ष सूचना प्रौद्योगिकी वर्ग–I (राजपत्रित) भर्ती और प्रोन्नति नियम, 2008,

(vi) इस विभाग की अधिसूचना संख्याः ई0डी0एन0 (टी0ई0)ए(3)11 / 96, तारीख 03–02–2003 द्वारा अधिसूचित हिमाचल प्रदेश तकनीकी शिक्षा व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग, विभागाध्यक्ष में (ऑटोमोबाइल इंजीनियरिंग) वर्ग–I (राजपत्रित) भर्ती और प्रोन्नति नियम, 2003,

(vii) इस विभाग की अधिसूचना संख्याः ई0डी0एन0 (टी0ई0)ए(3)12 / 96, तारीख 05–03–2004 द्वारा अधिसूचित हिमाचल प्रदेश तकनीकी शिक्षा व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग, विभागाध्यक्ष (स्थापत्यकला) वर्ग–I (राजपत्रित) भर्ती और प्रोन्नति नियम, 2004,

(viii) इस विभाग की अधिसूचना संख्याः ई0डी0एन0 (टी0ई0)ए(3)3 / 2008, तारीख 25–02–2009 द्वारा अधिसूचित हिमाचल प्रदेश तकनीकी शिक्षा व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग, विभागाध्यक्ष (कम्प्यूटर इंजीनियरिंग) वर्ग–I (राजपत्रित) भर्ती और प्रोन्नति नियम, 2009,

(ix) इस विभाग की अधिसूचना संख्याः ई0डी0एन0 (टी0ई0)ए(3)26 / 96, तारीख 16–09–97 द्वारा अधिसूचित हिमाचल प्रदेश तकनीकी शिक्षा व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग, विभागाध्यक्ष (इन्सट्रूमेन्टेशन इंजीनियरिंग) वर्ग–I (राजपत्रित) भर्ती और प्रोन्नति नियम, 1997,

(x) इस विभाग की अधिसूचना संख्याः ई0डी0एन0 (टी0ई0)ए(3)9 / 2007, तारीख 27–08–2012 द्वारा अधिसूचित हिमाचल प्रदेश तकनीकी शिक्षा, व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग, विभागाध्यक्ष (अनुप्रयुक्त विज्ञान एवं मानविकी) वर्ग–I (राजपत्रित) भर्ती और पदोन्नति नियम, 2012, और

(xi) इस विभाग की अधिसूचना संख्याः ई0डी0एन0 (टी0ई0)ए(3)14 / 96, तारीख 24–02–2004 द्वारा अधिसूचित हिमाचल प्रदेश तकनीकी शिक्षा व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग, विभागाध्यक्ष (फॉर्मेसी) वर्ग–I (राजपत्रित) भर्ती और पदोन्नति नियम, 2004, का एतद्द्वारा निरसन किया जाता है।

(2) ऐसे निरसन के होते हुए भी उपर्युक्त उप–नियम 2(1) के अधीन इस प्रकार निरसित नियमों के अधीन की गई कोई नियुक्ति या बात या कार्रवाई इन नियमों के अधीन विधिमान्य रूप में की गई समझी जाएगी।

हस्ताक्षरित / –

(प्रियतु मण्डल),
सचिव,
तकनीकी शिक्षा, व्यावसायिक एवं औद्योगिक प्रशिक्षण।

उपाबन्ध ''क''

हिमाचल प्रदेश तकनीकी शिक्षा, व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग में विभागाध्यक्ष (इंजीनियरिंग और नॉन–इंजीनियरिंग) ग्रुप–ए (राजपत्रित) के पद के लिए भर्ती और प्रोन्नति नियम।

1. **पद का नाम.**––विभागाध्यक्ष (इंजीनियरिंग और नॉन– इंजीनियरिंग)

2. **पद (पदों) की संख्या.**––71 (इकहत्तर)

विभागाध्यक्ष (इलैक्ट्रॉनिक्स एंड कॉम्युनिकेशन इंजीनियरिंग)=06

विभागाध्यक्ष (मकैनिकल इंजीनियरिंग)=08

विभागाध्यक्ष (इलैक्ट्रीकल इंजीनियरिंग)=10

विभागाध्यक्ष (सिविल इंजीनियरिंग)=11

विभागाध्यक्ष (इन्फॉरमेंशन टैकनॉलौजी)=01

विभागाध्यक्ष (ऑटोमोबाईल इंजीनियरिंग)=05

विभागाध्यक्ष (स्थापत्यकला) =03

विभागाध्यक्ष (कम्प्यूटर इंजीनियरिंग)=10

विभागाध्यक्ष (इन्सट्रूमेन्टेशन इंजीनियरिंग)=01

विभागाध्यक्ष (अनुप्रयुक्त विज्ञान एवं मानविकी)=13

विभागाध्यक्ष (फॉर्मेसी)=03

3. **वर्गीकरण.**––ग्रुप–ए

4. **वेतनमान.**––हिमाचल प्रदेश सिविल सेवाएं (संशोधित वेतन) नियम, 2022 के अनुसार पद के टाइम स्केल समयमान से संलग्न पे–मैट्रिक्स का स्तर–24.

5. **'चयन' पद अथवा 'अचयन' पद.**––चयन

6. **सीधी भर्ती के लिए आयु.**––18 से 45 वर्षः

परन्तु सीधी भर्ती किए जाने वाले व्यक्तियों के लिए ऊपरी आयु सीमा, तदर्थ या संविदा के आधार पर नियुक्त किए गए व्यक्तियों सहित, पहले से ही सरकार की सेवा में रत अभ्यर्थियों को लागू नहीं होगीः

परन्तु यह और कि यदि तदर्थ या संविदा के आधार पर नियुक्त किया गया अभ्यर्थी इस रूप में नियुक्ति की तारीख को अधिक आयु का हो गया हो तो वह उसकी ऐसी तदर्थ या संविदा पर की गई नियुक्ति के कारण विहित आयु में शिथिलीकरण का पात्र नहीं होगाः

परन्तु यह और कि ऊपरी आयु सीमा में अनुसूचित जातियों / अनुसूचित जन–जातियों / अन्य पिछड़ा वर्गों और व्यक्तियों के अन्य प्रवर्गों के लिए, उस विस्तार तक शिथिलीकरण किया जाएगा जितना कि हिमाचल प्रदेश सरकार के साधारण या विशेष आदेश (आदेशों) के अधीन अनुज्ञेय है:

परन्तु यह और भी कि समस्त पब्लिक सैक्टर निगमों तथा स्वायत्त निकायों के कर्मचारियों को, जो ऐसे पब्लिक सैक्टर निगमों / स्वायत्त निकायों के प्रारम्भिक गठन के समय ऐसे पब्लिक सैक्टर, निगमों / स्वायत्त निकायों में आमेलन से पूर्व सरकारी कर्मचारी थे, सीधी भर्ती के लिए आयु सीमा में ऐसी ही रियायत अनुज्ञात की जाएगी जैसी सरकारी कर्मचारियों को अनुज्ञेय है, ऐसी रियायत, तथापि पब्लिक सैक्टर, निगमों / स्वायत्त निकायों के ऐसे कर्मचारिवृन्द को अनुज्ञेय नहीं होगी जो तत्पश्चात् ऐसे निगमों / स्वायत निकायों द्वारा नियुक्त किए गए थे / किए गए हैं और उन पब्लिक सैक्टर निगमों / स्वायत्त निकायों के प्रारम्भिक गठन के पश्चात् ऐसे निगमों / स्वायत निकायों की सेवा में अन्तिम रूप से आमेलित किए गए हैं / किए गए थे।

टिप्पण.––सीधी भर्ती के लिए आयु सीमा की गणना उस वर्ष के प्रथम दिवस से की जाएगी, जिसमें कि पद (पदों) को आवेदन आमंत्रित करने के लिए, यथास्थिति, विज्ञापित किया गया है या नियोजनालयों को अधिसूचित किया गया है।

7. सीधे भर्ती किए जाने वाले व्यक्ति (व्यक्तियों) के लिए अपेक्षित न्यूनतम शैक्षिक और अन्य अर्हताए.––(क) अनिवार्य अर्हता(एं):

(i) इंजीनियरिंग / प्रौद्योगिकी.––किसी मान्यता प्राप्त विश्वविद्यालय या हिमाचल प्रदेश सरकार / केन्द्रीय सरकार द्वारा सम्यक् रूप से मान्यता प्राप्त किसी संस्थान से इंजीनियरिंग / प्रौद्योगिकी की समुचित शाखा में या तो स्नातक या स्नातकोतर स्तर पर प्रथम श्रेणी सहित स्नातक और स्नातकोतर उपाधि प्राप्त की हो तथा अध्यापन / अनुसन्धान / उद्योग में कम से कम दस वर्ष का सुसंगत अनुभव हो।

अथवा

किसी मान्यता प्राप्त विश्वविद्यालय या हिमाचल प्रदेश सरकार / केन्द्रीय सरकार द्वारा सम्यक् रूप से मान्यता प्राप्त किसी संस्थान से इंजीनियरिंग / प्रौद्योगिकी की समुचित शाखा में या तो स्नातक या स्नातकोतर स्तर में प्रथम श्रेणी सहित स्नातक एवं स्नातकोतर हो, और इंजीनियरिंग / प्रौद्योगिकी में सम्बन्धित शाखा में पी0एच0डी0 सहित अध्ययन / अनुसन्धान / उद्योग में न्यूनतम पांच वर्ष का सुसंगत अनुभव हो।

(ii) फॉर्मेसी.––किसी मान्यता प्राप्त विश्वविद्यालय या हिमाचल प्रदेश सरकार / केन्द्रीय सरकार द्वारा सम्यक् रूप से मान्यता प्राप्त किसी संस्थान से फॉर्मेसी में या तो स्नातक या स्नातकोतर स्तर पर प्रथम श्रेणी में स्नातक और स्नातकोतर उपाधि सहित अध्यापन / अनुसन्धान / उद्योग में कम से कम दस वर्ष का सुसंगत अनुभव रखता हो।

अथवा

किसी मान्यता प्राप्त विश्वविद्यालय या हिमाचल प्रदेश सरकार / केन्द्र सरकार द्वारा सम्यक् रूप से मान्यता प्राप्त किसी संस्थान से फॉर्मेसी में या तो स्नातक या स्नातकोतर स्तर पर प्रथम श्रेणी में स्नातक और स्नातकोतर उपाधि हो और फॉर्मेसी में पी0एच0डी0 सहित अध्यापन / अनुसन्धान / उद्योग में कम से कम पांच वर्ष का सुसंगत अनुभव हो।

(iii) अनुप्रयुक्त विज्ञान एवं मानविकी.––किसी मान्यता प्राप्त विश्वविद्यालय या हिमाचल प्रदेश सरकार / केन्द्रीय सरकार द्वारा सम्यक् रूप से मान्यता प्राप्त किसी संस्थान से समुचित विषय अर्थात् भौतिक विज्ञान, रसायन विज्ञान, गणित या अंग्रेजी में या तो स्नातक या स्नातकोतर स्तर

पर प्रथम श्रेणी उपाधि सहित अध्यापन / अनुसन्धान / उद्योग में कम से कम दस वर्ष का सुसंगत अनुभव रखता हो।

अथवा

किसी मान्यता प्राप्त विश्वविद्यालय या हिमाचल प्रदेश सरकार / केन्द्रीय सरकार द्वारा सम्यक् रूप से मान्यता प्राप्त किसी संस्थान से समुचित विषय अर्थात् भौतिक विज्ञान, रसायन विज्ञान, गणित या अंग्रेजी में स्नातक या स्नातकोतर स्तर पर प्रथम श्रेणी उपाधि रखता हो और समुचित शाखा में पी0एच0डी0 सहित अध्यापन / अनुसन्धान / उद्योग में कम से कम पांच वर्ष का सुसंगत अनुभव हो।

(iv) स्थापत्यकला.––किसी मान्यता प्राप्त विश्वविद्यालय या हिमाचल प्रदेश सरकार / केन्द्रीय सरकार द्वारा सम्यक् रूप से मान्यता प्राप्त संस्थान से स्थापत्यकला में या तो स्नातक स्तर या स्नातकोतर स्तर पर प्रथम श्रेणी सहित स्नातक उपाधि और स्नातकोतर उपाधि सहित अध्यापन / अनुसन्धान / उद्योग में कम से कम दस वर्ष का सुसंगत अनुभव रखता हो या वास्तुकला परिषद् द्वारा यथाप्रमाणित दस वर्ष की व्यावसायिक प्रैक्टिस को भी विधिमान्य समझा जाएगा।

अथवा

किसी मान्यता प्राप्त विश्वविद्यालय या हिमाचल प्रदेश सरकार / केन्द्रीय सरकार द्वारा सम्यक् रूप से मान्यता प्राप्त संस्थान से स्थापत्यकला में या तो स्नातक स्तर पर या स्नातकोतर स्तर पर प्रथम श्रेणी सहित स्नातक एवं स्नातकोतर हो और स्थापत्यकला में पी0एच0डी0 सहित अध्यापन / अनुसन्धान / उद्योग में कम से कम पांच वर्ष का सुसंगत अनुभव हो या वास्तुकला परिषद् द्वारा यथाप्रमाणित पांच वर्ष की व्यावसायिक प्रैक्टिस को भी विधिमान्य समझा जाएगा।

(ख) वांछनीय अर्हता (एं) : हिमाचल प्रदेश की रूढ़ियों रीतीयों और बोलियों का ज्ञान और प्रदेश में विद्यमान् विशिष्ट दशाओं में नियुक्ति के लिए उपयुक्तता।

8. सीधी भर्ती किए जाने वाले व्यक्ति (व्यक्तियों) के लिए विहित आयु और शैक्षिक अर्हता(एं), प्रोन्नत व्यक्तियों की दशा में लागू होंगी या नहीं.––*आयुः* लागू नहीं।

शैक्षिक अर्हता : लागू नहीं

9. परिवीक्षा की अवधि, यदि कोई हो.––सीधी भर्ती / प्रोन्नति के लिएः (प) दो वर्ष, जिसका एक वर्ष से अनधिक ऐसी और अवधि के लिए विस्तार किया जा सकेगा जैसा सक्षम प्राधिकारी विशेष परिस्थितियों में और कारणों को लिखित में अभिलिखित करके आदेश दे।

10. भर्ती की पद्धतिः भर्ती सीधी होगी या प्रोन्नति, सैकण्डमैण्ट, स्थानान्तरण द्वारा और विभिन्न पद्धतियो द्वारा भरे जाने वाले पद (पदों) की प्रतिशतता.––शत्प्रतिशत प्रोन्नति द्वारा, यदि ऐसा न होने पर सैकण्डमैण्ट द्वारा, दोनों के न होने पर नियमित आधार पर सीधी भर्ती द्वारा।

11. प्रोन्नति / सैकण्डमैण्ट / स्थानान्तरण द्वारा भर्ती की दशा में वे श्रेणियां ग्रेड जिनसे प्रोन्नति / सैकण्डमैण्ट / स्थानान्तरण किया जाएगा.––सम्बद्ध शिक्षा–शाखा (ओं) के वरिष्ठ प्राध्यापक (कों) में से प्रोन्नति द्वारा, जिनका पांच वर्ष का नियमित सेवाकाल या ग्रेड में की गई लगातार तदर्थ सेवा, यदि कोई हो, को सम्मिलित करके पांच वर्ष का नियमित सेवाकाल हो, ऐसा न होने पर वरिष्ठ प्राध्यापक(कों) में से प्रोन्नति द्वारा, जिनका दस वर्ष का नियमित सेवाकाल या वरिष्ठ प्राध्यापक और प्राध्यापक / कार्यशाला अधीक्षक, जिसमें वरिष्ठ प्राध्यापक के रूप में कम से कम दो वर्ष का नियमित सेवाकाल हो, के रूप में लगातार तदर्थ सेवा को सम्मिलित करके दस वर्ष का नियमित सेवाकाल हो, उपरोक्त दोनों के न होने पर हिमाचल प्रदेश सरकार के अन्य विभागों से इस पद के समरूप वेतनमान पर कार्य करने वाले अभ्यर्थियों में से सैकण्डमैण्ट आधार परः

(I) परन्तु प्रोन्नति के प्रयोजन के लिए प्रत्येक कर्मचारी को, जन जातीय / कठिन / दुर्गम क्षेत्रों और दरूस्थ / ग्रामीण क्षेत्रों में पद (पदों) की ऐसे क्षेत्रों में पर्याप्त संख्या की उपलब्धता के अध्यधीन, कम से कम एक कार्यकाल तक सेवा करनी होगीः

परन्तु यह और कि उपर्युक्त परन्तुक (1) उन कर्मचारियों के मामले में लागू नहीं होगा जिनकी अधिवार्षिता के लिए पांच वर्ष या उससे कम की सेवा शेष रही हो। तथापि ऐसे पदधारियों को, उनकी प्रोन्नति पर दूरस्थ / ग्रामीण क्षेत्रों में तैनात / स्थानान्तरित किया जा सकेगाः

परन्तु यह और भी कि उन अधिकारियों / कर्मचारियों को, जिन्होंने जनजातीय / कठिन / दुर्गम क्षेत्रों और दूरस्थ / ग्रामीण क्षेत्रों में कम से कम एक कार्यकाल तक सेवा नहीं की है, ऐसे क्षेत्र में उसके अपने संवर्ग (काडर) में सर्वथा वरिष्ठता के अनुसार स्थानान्तरण किया जाएगा।

स्पष्टीकरण–I.—उपरोक्त परन्तुक (1) के लिए जनजातीय / कठिन / दुर्गम क्षेत्रों और दूरस्थ / ग्रामीण क्षेत्रों में "कार्यकाल" से, प्रशासनिक अत्यावश्यकताओं / सुविधा को ध्यान में रखते हुए, साधारणतया तीन वर्ष की अवधि या ऐसे क्षेत्रों में तैनाती की इससे कम अवधि अभिप्रेत होगी।

स्पष्टीकरण–II.—उपरोक्त परन्तुक (I) के प्रयोजन के लिए जनजातीय / कठिन क्षेत्र निम्न प्रकार से होंगेः–

1. जिला लाहौल एवं स्पिति

2. चम्बा जिला का पांगी और भरमौर उप–मण्डल

3. रोहडू उप–मण्डल का डोडरा क्वार क्षेत्र

4. जिला शिमला की रामपुर तहसील का पन्द्रह बीस परगना, मुनिश दरकाली और काशापाट

5. जिला कुल्लू का पन्द्रह बीस परगना

6. कांगडा जिला के बैजनाथ उप–मण्डल का बड़ा भंगाल क्षेत्र

7. जिला किन्नौर

8. सिरमौर जिला में उप–तहसील कमरउ के काठवाड़ और कोरगा पटवार वृत्त, रेणुकाजी तहसील के भलाड़–भलौना और सांगना पटवार वृत्त और शिलाई तहसील का कोटा पाब पटवार वृत्त।

9. मण्डी जिला में करसोग तहसील का खन्योल–बगड़ा पटवार वृत्त, बाली चौकी उप–तहसील के गाडा गुशैणी, मठियानी, घनयाड़, थाची, बागी, सोमगाड़ और खोलानाल पटवार वृत्त, पधर तहसील के झारवाड़, कुटगढ़, ग्रामन, देवगढ़, ट्रैला, रोपा, कथोग, सिल्ह–भड़वानी, हस्तपुर, घमरेड़ और भटेढ़ पटवार वृत्त, थुनाग तहसील के चिउणी, कालीपार, मानगढ, थाच–बगड़ा, उत्तरी मगरू और दक्षिणी मगरू पटवार वृत्त और सुन्दरनगर तहसील का बटवाड़ा पटवार वृत्त।

स्पष्टीकरण–III.––उपरोक्त परन्तुक (1) के प्रयोजन कि लिए दरूस्थ / ग्रामीण क्षेत्र निम्न प्रकार से होंगेः–

(i) उप–मण्डल / तहसील मुख्यालय से 20 किलोमीटर की परिधि से परे के समस्त स्थान

(ii) राज्य मुख्यालय और जिला मुख्यालय से 15 किलोमीटर की परिधि से परे के समस्त स्थान जहां के लिए बस सेवा उपलब्ध नहीं है और 3 किलोमीटर से अधिक की पैदल यात्रा करनी पड़ती है।

(iii) कर्मचारी का, उसके प्रवर्ग को ध्यान में लाए बिना अपने गृह नगर या गृह नगर क्षेत्र के साथ लगता 20 किलोमीटर की परिधि के भीतर का क्षेत्र।

(II) प्रोन्नति के सभी मामलों में पद पर नियमित नियुक्ति से पूर्व, सम्भरक(पोषक) पद में की गई लगातार तदर्थ सेवा, यदि कोई हो, इन नियमों में यथाविहित सेवाकाल के लिए, इस शर्त के अध्यधीन प्रोन्नति के लिए गणना में ली जाएगी, कि सम्भरक(पोषक) प्रवर्ग में तदर्थ नियुक्ति / प्रोन्नति भर्ती और प्रोन्नति नियमों के उपबन्धों के अनुसार चयन की उचित स्वीकार्य प्रक्रिया को अपनाने के पश्चात् की गई थीः

(i) परन्तु उन सभी मामलों में जिनमें कोई कनिष्ठ व्यक्ति सम्भरक(पोषक) पद में अपने कुल सेवाकाल (तदर्थ आधार पद की गई सेवा सहित, जो नियमित सेवा / नियुक्ति के अनुसरण में हो) के आधार पर उपर्युक्त निर्दिष्ट उपबन्धों के कारण विचार किए जाने का पात्र हो जाता है, वहाँ उससे वरिष्ठ सभी व्यक्ति अपने– अपने प्रवर्ग / पद / काडर में विचार किए जाने के पात्र समझे जाएंगे और विचार करते समय कनिष्ठ व्यक्ति से ऊपर रखे जाएगेः

परन्तु यह और कि उन सभी पदधारियों की, जिन पर प्रोन्नति के लिए विचार किया जाना है, की कम से कम तीन वर्ष की न्यूनतम अर्हता सेवा या पद के भर्ती और प्रोन्नति नियमों में विहित सेवा, जो भी कम हो, होगीः

परन्तु यह और भी कि जहाँ कोई व्यक्ति पूर्वगामी परन्तुक की अपेक्षाओं के कारण प्रोन्नति किए जाने सम्बन्धी विचार के लिए अपात्र हो जाता है, वहाँ उससे कनिष्ठ व्यक्ति भी ऐसी प्रोन्नति के विचार के लिए अपात्र समझा जाएगा / समझे जाएंगे।

स्पष्टीकरण.––अंतिम परन्तुक के अन्तर्गत कनिष्ठ पदधारी प्रोन्नति के लिए अपात्र नहीं समझा जाएगा यदि वरिष्ठ अपात्र व्यक्ति भूतपूर्व सैनिक है जिसने आपातकाल के अवधि के दौरान सशस्त्र बलों में कार्य ग्रहण किया था और जिसे डिमोबिलाइज्ड आर्मड फोर्सिज परसोनल (रिजर्वेशन ऑफ वैकन्सीज इन दी हिमाचल स्टेट नॉन–टैक्नीकल सर्विसीज) रूल्ज, 1972 के नियम–3 के उपबन्धों के अन्तर्गत भर्ती किया गया है और तद्धीन वरीयता लाभ दिए गए हों या जिसे एक्स–सर्विसमैन (रिजर्वेशन ऑफ वैकन्सीज इन दी हिमाचल प्रदेश टैक्नीकल सर्विसिज) रूल्ज, 1985 के नियम–3 के उपबन्धों के अन्तर्गत भर्ती किया गया हो और तद्धीन वरीयता लाभ दिए गए हों।

(ii) इसी प्रकार स्थायीकरण के सभी मामलों में ऐसे पद पर नियमित नियुक्ति से पूर्व सम्भरक (पोषक) पद पर की गई लगातार तदर्थ सेवा, यदि कोई हो, सेवाकाल के लिए गणना में ली जाएगी, यदि तदर्थ नियुक्ति / प्रोन्नति उचित चयन के पश्चात् और भर्ती और प्रोन्नति नियमों के उपबन्धों के अनुसार की गई थीः

परन्तु की गई तदर्थ सेवा को गणना में लेने के पश्चात् जो स्थायीकरण होगा उसके फलस्वरूप पारस्परिक वरीयता अपरिवर्तित रहेगी।

12. यदि विभागीय प्रोन्नति स्थायीकरण समिति विद्यमान हो तो उसकी संरचना.––जैसा सरकार द्वारा समय–समय पर गठित की जाए।

13. भर्ती करने में किन परिस्थितियों में हिमाचल प्रदेश लोक सेवा आयोग से परामर्श किया जाएगा.–– जैसा विधि द्वारा अपेक्षित हो ।

14. सीधी भर्ती के लिए अनिवार्य अपेक्षा.––किसी सेवा या पद पर नियुक्ति के लिए अभ्यर्थी भारत का नागरिक होना अनिवार्य है।

15. सीधी भर्ती द्वारा पद पर नियुक्ति के लिए चयन.––सीधी भर्ती के मामले में पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा यदि, यथास्थिति, हिमाचल प्रदेश लोक सेवा आयोग या अन्य भर्ती प्राधिकरण ऐसा करना आवश्यक या समीचित समझें, तो लिखित परीक्षा या व्यावहारिक परीक्षा के

आधार पर किया जाएगा, जिसका स्तर / पाठ्यक्रम इत्यादि हिमाचल प्रदेश लोक सेवा आयोग / अन्य भर्ती प्राधिकरण द्वारा अवधारित किया जाएगा।

16. आरक्षण.––सेवा में नियुक्ति, हिमाचल प्रदेश सरकार द्वारा, समय–समय पर अनुसूचित जातियों / अनुसूचित जनजातियों / अन्य प्रवर्गो के व्यक्तियों के लिए सेवा में आरक्षण की बाबत जारी किए गए आदेशों के अध्यधीन होगी।

17. विभागीय परीक्षा.––सेवा में प्रत्येक सदस्य को समय–समय पर यथा संशोधित हिमाचल प्रदेश विभागीय परीक्षा नियम, 1997 में यथा विहित विभागीय परीक्षा पास करनी होगी।

18. शिथिल करने की शक्ति.––जहां राज्य सरकार की यह राय हो कि ऐसा करना आवश्यक या समीचीन है, वहां वह, कारणों को अभिलिखित करके और हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, आदेश द्वारा, इन नियमों के किसी / किन्हीं उपबन्ध (उपबन्धों) को किसी वर्ग या व्यक्ति (व्यक्तियों) के प्रवर्ग या पद (पदों) की बाबत, शिथिल कर सकेगी

————————

[Authoritative English text of this Department Notification No. EDN (TE) A (3) 1/2023 dated 16-10-2023 as required under Article 348 (3) of the Constitution of India].

TECHNICAL EDUCATION, VOCATIONAL & INDUSTRIAL TRAINING DEPARTMENT

NOTIFICATION

Shimla-171 002, the 16th October, 2023

No. EDN (TE) A (3) 1/2023.—In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with the Himachal Pradesh Public Service Commission, is pleased to make the Recruitment and Promotion Rules for the post of Head of Department (Engineering & Non-Engineering) Group-A (Gazetted) in the Department of Technical Education, Vocational & Industrial Training, Himachal Pradesh, as per Annexure-'A' attached to this notification, namely:—

1. Short title and commencement.—(1) These rules may be called the Himachal Pradesh Technical Education, Vocational & Industrial Training Department, Head of Department (Engineering and Non-Engineering) Group-A (Gazetted), Recruitment and Promotion Rules, 2023.

(2) These rules shall come into force from the date of publication in the Rajparta (e-Gazette), Himachal Pradesh.

2. Repeal & Savings.—(1) (i) The Himachal Pradesh, Technical Education, Vocational and Industrial Training Department, Head of Department in Electronics and Tele-communication (Class-I, Gazetted) Recruitment and Promotion Rules, 1990 notified vide this Department Notification No. 1-2/83-STV-Vol.II, dated 22.06.1990,

(ii) The Himachal Pradesh, Technical Education, Vocational and Industrial Training Department, Head of Department (Mechanical Engineering) Class-I (Gazetted) Recruitment and Promotion Rules, 2000 notified *vide* this Department Notification No. EDN(TE)A(3)10/96 dated 04.07.2000,

(iii) The Himachal Pradesh, Technical Education, Vocational and Industrial Training Department, Head of Department Electrical Engineering Class-I (Gazetted) Recruitment and

Promotion Rules, 1997 notified *vide* this Department Notification No. EDN(TE)A(3)14/97 dated 17.11.98,

(iv) The Himachal Pradesh, Technical Education, Vocational and Industrial Training Department, Head of Department (Civil Engineering) Class-I (Gazetted) Recruitment and Promotion Rules, 2000 notified *vide* this Department Notification No. EDN(TE)A(3)8/96 dated 20.05.2000,

(v) The Himachal Pradesh, Technical Education, Vocational and Industrial Training Department, Head of Department, Information Technology Class-I (Gazetted) Recruitment and Promotion Rules, 2008 notified *vide* this Department Notification No. EDN(TE)A(3)17/2006 dated 2008,

(vi) The Himachal Pradesh, Technical Education, Vocational and Industrial Training Department, Head of Department (Automobile Engineering) (Class-I, Gazetted) Recruitment and Promotion Rules, 2003 notified *vide* this Department Notification No. EDN(TE)A(3)11/96 dated 03.02.2003,

(vii) The Himachal Pradesh, Technical Education, Vocational and Industrial Training Department, Head of Department (Architecture) Class-I (Gazetted) Recruitment and Promotion Rules, 2004 notified *vide* this Department Notification No. EDN(TE)A(3)12/96 dated 05.03.2004,

(viii) The Himachal Pradesh, Technical Education, Vocational and Industrial Training Department, Head of Department (Computer Engineering) (Class-I, Gazetted) Recruitment and Promotion Rules, 2009 notified *vide* this Department Notification No. EDN(TE)A(3)3/2008 dated 25.02.2009,

(ix) The Himachal Pradesh, Technical Education, Vocational and Industrial Training Department, Head of Department (Instrumentation Engineering) Class-I (Gazetted) Recruitment and Promotion Rules, 1997 notified *vide* this Department Notification No. EDN(TE)A- (3)26/96 dated 16.09.97,

(x) The Himachal Pradesh, Technical Education, Vocational and Industrial Training Department, Head of Department (Applied Sciences & Humanities) Class-I (Gazetted) Recruitment and Promotion Rules, 2012 notified *vide* this Department Notification No. EDN(TE)A(3)-9/2007 dated 27.08.2012 and

(xi) The Himachal Pradesh, Technical Education, Vocational and Industrial Training Department, Head of Department (Pharmacy) (Class-I, Gazetted) Recruitment and Promotion Rules, 2004 notified *vide* this Department Notification No. EDN(TE)A(3)14/96 dated 24.02.2004, are hereby repealed.

(2) Notwithstanding such repeal, any appointment made or anything done or any action taken under these rules so repealed under sub-rule 2 (1) supra shall be deemed to have been validly made, done or taken under these rules.

Sd/-
(PRIYATU MANDAL),
Secretary,
Technical Education,
Vocational & Industrial Training,

ANNEXURE "A"

RECRUITMENT AND PROMOTION RULES FOR THE POST OF HEAD OF DEPARTMENT (ENGINEERING AND NON-ENGINEERING), (GROUP-A), IN THE DEPARMTENT OF TECHNICAL EDUCATION, VOCATIONAL & INDUSTRIAL TRAINING, HIMACHAL PRADESH

1. **Name of the post.—**Head of Department (Engineering and Non-Engineering)

2. **Number of post(s).**—71 (Seventy one)

Head of Department (Electronics and Communication Engineering) =06

Head of Department (Mechanical Engineering) = 08

Head of Department (Electrical Engineering) = 10

Head of Department (Civil Engineering) = 11

Head of Department (Information Technology) = 01

Head of Department (Automobile Engineering) = 05

Head of Department (Architecture) = 03

Head of Department (Computer Engineering) = 10

Head of Department (Instrumentation Engineering) = 01

Head of Department (Applied Sciences and Humanities) = 13

Head of Department (Pharmacy) = 03

3. **Classification.—**Group-A

4. **Scale of Pay.—**Level-24 of the Pay Matrix attached with time scale of the post, as per H.P. Civil Service (Revised Pay) Rules, 2022.

5. **Whether "Selection" post or "Non- Selection" post.—**Selection

6. **Age for direct recruitment.—**Between 18 to 45 years:

Provided that the upper age limit for direct recruits will not be applicable to the candidates already in service of the Government including those who have been appointed on *adhoc* or on contract basis:

Provided further that if a candidate appointed on *ad hoc* or on contract basis had become over-age on the date he was appointed as such, he shall not be eligible for any relaxation in the prescribed age-limit by virtue of his such *ad hoc* or contract appointment:

Provided further that upper age limit is relaxable for Scheduled Castes/Scheduled Tribes/Other Backward Classes and Other categories of persons to the extent permissible under the general or special order(s) of the Himachal Pradesh Government:

Provided further that the employees of all the Public Sector Corporations and Autonomous Bodies who happened to be Government Servant before absorption in Public Sector Corporations/ Autonomous Bodies at the time of initial constitution of such Corporations/Autonomous Bodies shall be allowed age concession in direct recruitment as admissible to Government servants. This concession will not, however, be admissible to such staff of the Public Sector Corporations/ Autonomous Bodies who were/are subsequently appointed by such Corporation/Autonomous Bodies and who are/were finally absorbed in the service of such Corporations/Autonomous Bodies after initial constitution of the Public Sector Corporations/Autonomous Bodies.

Note.—Age limit for direct recruitment will be reckoned on the first day of the year in which the Post(s) is/are advertised for inviting applications or notified to the Employment Exchanges or as the case may be.

7. Minimum educational and other qualifications required for direct recruit(s).—*(a) Essential Qualification(s):*

(i) Engineering/Technology :

Bachelor and Master degree of appropriate branch in Engineering / Technology from a recognized University or Institution duly recognized by the H.P. / Central Government with first Class either at Bachelor or Master Level, with minimum of 10 years relevant experience in teaching / research / industry.

OR

Bachelor and Master degree of appropriate branch in Engineering/Technology from a recognized University or Institution duly recognized by the H.P. / Central Government with first Class either at Bachelor or Master Level and Ph.D. in appropriate discipline in Engineering/Technology, with Minimum of 5 years relevant experience in teaching / research/industry.

(ii) Pharmacy:

Bachelor and Master degree in Pharmacy from a recognized University or Institution duly recognized by the H.P./Central Government with first class either at Bachelor level or Master level, with minimum of 10 years relevant experience in teaching/research/industry.

OR

Bachelor and Master degree in Pharmacy from a recognized University or Institution duly recognized by the H.P./Central Government with first class either at Bachelor level or Master level and Ph. D in Pharmacy with minimum of 5 years relevant experience in teaching /research/industry.

(iii) Applied Sciences and Humanities:

1st Class Master Degree in appropriate subject *viz*. Physics, Chemistry, Mathematics or English from a recognized University or Institution duly recognized by the H.P./Central Government, with minimum of 10 years relevant experience in teaching /research/ industry.

OR

1st Class Master Degree in appropriate subject *viz.* Physics, Chemistry, Mathematics or English from a recognized University or Institution duly recognized by the H.P./Central

Government and Ph.D. in appropriate branch with minimum of 5 years relevant experience in teaching/research/industry.

(iv) Architecture:

Bachelor degree and Master degree in Architecture from a recognized University or Institution duly recognized by the H.P./Central Government with first Class either at Bachelor level or Master level with minimum of 10 years relevant experience in teaching / research/industry or professional practice of 10 years as certified by the Council of Architecture shall also be considered valid.

OR

Bachelor degree and Master degree in Architecture from a recognized University or Institution duly recognized by the H.P./Central Government with first Class either at Bachelor level or Master level and Ph.D. in Architecture with minimum of 5 years relevant experience in teaching / research / industry or professional practice of 5 years as certified by the Council of Architecture shall also be considered valid.

(b) Desirable Qualification(s).—Knowledge of customs, manner and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh.

8. Whether age and educational qualification(s) prescribed for direct recruit(s) will apply in the case of the promotee(s).—*Age :* Not applicable

Educational qualification : Not applicable

9. Period of probation, if any.—*Direct Recruitment/Promotion*:

Two years or the period of probation prescribed for the direct recruitment to the post, if any, in the case of promotion from one group to another.

10. Method(s) of recruitment, whether by direct recruitment or by promotion/ secondment/transfer and the percentage of post(s) to be filled in by various methods.—100% by promotion, failing which on secondment basis, failing both by direct recruitment on regular basis.

11. In case of recruitment by promotion/secondment/transfer, grade for which promotion/ secondment/transfer is to be made.—By promotion from amongst the Sr. Lecturer(s) of concerned discipline(s) having 05 years regular service or regular combined with continuous *adhoc* service, if any, in the grade failing which from amongst the Sr. Lecturer(s) having 10 years regular service or regular combined with continuous *adhoc* service as Sr. Lecturer and Lecturer / Workshop Superintendent with atleast 02 years of regular service as Sr. Lecturer failing both on secondment basis from the incumbents of this post working in the identical pay scales from other Himachal Pradesh Government Departments.

(I) Provided that for the purpose of promotion every employee shall have to serve atleast one term in the Tribal/Difficult/Hard areas and remote/rural areas subject to adequate number of post(s) available in such areas:

Provided further that the proviso (I) *supra* shall not be applicable in the case of those employees who have five years or less service, left for superannuation. However, such incumbents may be posted / transferred to remote/rural areas in their promotion:

Provided further that Officer/Official who has not served atleast one tenure in Tribal / Difficult / Hard areas and remote / rural areas shall be transferred to such area strictly in accordance with his / her seniority in the respective cadre.

Explanation-I.—For the purpose of proviso (I) *supra* the "term" in Tribal / Difficult / Hard areas / remote / rural areas shall mean normally three years or less period of posting in such areas keeping in view the administrative exigencies / convenience.

Explanation-II.—For the purpose of proviso (I) *supra* the Tribal / Difficult Areas shall be as under:—

1. District Lahaul & Spiti

2. Pangi and Bharmour Sub-Division of Chamba District

3. Dodra Kawar Area of Rohru Sub-Division

4. Pandrah Bis Pargana, Munish Darkali and Gram Panchyat Kashapat, Gram Panchyats of Rampur Tehsil of District Shimla.

5. Pandrah Bis Pargana of Kullu District

6. Bara Bhangal Areas of Baijnath Sub-Division of Kangra District

7. District Kinnaur

8. Kathwar and Korga Patwar Circles of Kamrau Sub-Tehsil, Bhaladh Bhalona and Sangna Patwar Circles of Renukaji Tehsil and Kota Pab Patwar Circle of Shillai Tehsil, in Sirmaur District.

9. Khanyol-Bagra Patwar Circle of Karsog Tehsil, Gada-Gussaini, Mathyani, Ghanyar, Thachi, Baggi, Somgad and Kholanal of Bali-Chowki Sub-Tehsil, Jharwar, Kutgarh, Graman, Devgarh, Trailla, Ropa, Kathog, Silh-Badhwani, Hastpur, Ghamrehar and Bhatehar Patwar Circle of Padhar Tehsil, Chiuni, Kalipar, Mangarh, Thach-Bagra, North Magru and South Magru Patwar Circles of Thunag Tehsil and Batwara Patwar Circle of Sunder Nagar Tehsil in Mandi District.

Explanation-III.—For the purpose of proviso (I) *supra* the Remote / Rural Areas shall be as under:

(i) All stations beyond the radius of 20 Kms. from Sub-Division / Tehsil Headquarter.

(ii) All stations beyond the radius of 15 Kms. from State Headquarter and District head quarters where bus service is not available and on foot journey is more than 3 (three) Kms.

(iii) Home town or area adjoining to area of home town within the radius of 20 Kms. of the employee regardless of its category.

(II) In all cases of promotion, the continuous *ad hoc* service rendered in the feeder post if any, prior to regular appointment to the post shall be taken into account towards the length of service as prescribed in these rules for promotion subject to the condition that the *ad hoc*

appointment / promotion in the feeder category had been made after following proper acceptable process of selection in accordance with the provisions of R & P Rules:

(i) Provided that in all cases where a junior person becomes eligible for consideration by virtue of his total length of service (including the service rendered on *ad hoc* basis followed by regular service / appointment) in the feeder post in view of the provisions referred to above, all persons senior to him in the respective category / post / cadre shall be deemed to be eligible for consideration and placed above the junior person in the field of consideration:

Provided that all incumbents to be considered for promotion shall possess the minimum qualifying service of atleast three years or that prescribed in the Recruitment & Promotion Rules for the post, whichever is less:

Provided further that where a person becomes ineligible to be considered for promotion on account of the requirements of the preceding proviso, the person(s) junior to him shall also be deemed to be ineligible for consideration for such promotion.

Explanation.—The last proviso shall not render the junior incumbents ineligible for consideration for promotion if the senior ineligible persons happened to be Ex-servicemen who have joined armed forces during the period of emergency and recruited under the provisions of Rule-3 of Demobilized Armed Forces Personnel (Reservation of Vacancies in Himachal State Non-Technical Services) Rules, 1972 and having been given the benefit of seniority thereunder or recruited under the provisions of Rule-3 of the Ex-servicemen (Reservation of vacancies in the Himachal Pradesh Technical Service) Rules, 1985 and having been given the benefit of seniority thereunder.

(ii) Similarly, in all cases of confirmation, continuous *adhoc* service rendered on the feeder tpost if any, prior to the regular appointment against such posts shall be taken into account towards the length of service, if the *adhoc* appointment / promotion had been made after proper selection and in accordance with the provision of the Recruitment & Promotion Rules:

Provided that inter-se-seniority as a result of confirmation after taking into account, *adhoc* service rendered shall remain unchanged.

12. If a Departmental Promotion/Confirmation Committee exist, what is its composition.—*Departmental Promotion/Confirmation Committee :* As may be constituted by the Government from time to time.

13. Circumstances under which the Himachal Pradesh Public Service Commission (H.P.P.S.C.) is to be consulted in making recruitment.—As required under the Law.

14. Essential requirement for a direct recruitment.—A candidate for appointment to any service or post must be a citizen of India.

15. Selection for appointment to the post by direct recruitment.—Selection for appointment to the post in the case of direct recruitment shall be made on the basis of interview/personality test or if the Himachal Pradesh Public Service Commission or other recruiting agency/authority as the case may be, so consider necessary or expedient on the basis of interview/personality test preceded by a screening test (objective type)/ written test or practical test

or physical test, the standard/syllabus, etc. of which , will be determined by the Commission/other recruiting agency/authority as the case may be.

16. Reservation.—The appointment to the service shall be subject to orders regarding reservation in the service for Scheduled Castes / Scheduled Tribes / Other Backward Classes / other categories of persons issued by the Himachal Pradesh Government from time to time.

17 Departmental Examination.—Every member of the service shall pass a Departmental Examination as prescribed in the Himachal Pradesh Departmental Examination Rules, 1997, as amended from time to time.

18. Power to relax.—Where the State Government is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and in consultation with the Himachal Pradesh Public Service Commission relax any of the provision(s) of these Rules with respect to any class or category of person(s) or post(s).

———————

नाम परिवर्तन

मैं, Parveen Kaur पत्नी मनमोहन सिंह, निवासी गुरुनानक निवास पैलेस रोड, तहसील व जिला सोलन (हि0प्र0) ने अपना नाम Parveen Kaur Suri से बदलकर Parveen Kaur रख लिया है। सम्बन्धित नोट करें।

PARVEEN KAUR
पत्नी मनमोहन सिंह,
निवासी गुरुनानक निवास पैलेस रोड,
तहसील व जिला सोलन (हि0प्र0)।

————————

CHANGE OF NAME

I, Shalu Dhiman d/o Kushal Kumar, Village Marh, P.O. Chobin, Tehsil Baijnath, Distt. Kangra (H.P.) declare that I have changed my name from Shalu Devi to Shalu Dhiman in my Educational and Govt. documents. Concerned note.

SHALU DHIMAN
d/o Kushal Kumar,
Village Marh, P.O. Chobin,
Tehsil Baijnath, Distt. Kangra (H.P.).

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है।